Supreme Court, U.S.
FILED
JAN 20 2004
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No. 03-1058

In The
# Supreme Court of the United States

RUBY CARTER, Individually, and on Behalf of the Wrongful Death Heirs, Beneficiaries, and Estate of STACIE CARTER, DECEASED,

*Petitioners,*

versus

MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FRED CHILDS, in His Official Capacity as Superintendent of the Rankin County, Mississippi Correctional Facility,

*Respondents.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Mississippi**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Should lower courts consider evidence of deplorable medical conditions in a prison facility, prison policies concerning medical care for inmates, and the quality of care given other inmates when deciding whether or not prison officials were deliberately indifferent to the serious medical needs of an inmate in violation of the Eighth Amendment to the United States Constitution and *42 U. S. C. § 1983*?

2. Did the policies and actions of prison officials in not having an ambulance, physician, or nurse on duty at a prison medical facility and in not providing any treatment by a physician or nurse to a prison inmate who died after suffering more than seven seizures over a two hour period amount to "deliberate indifference" to a substantial risk of serious harm to the inmate in violation of the Eighth Amendment to the United States Constitution and *42 U. S. C. § 1983*?

3. Does *Miss. Code Ann. § 11-46-9(1)(m) (Rev. 2002)*, which bars claims by wrongful death heirs of a prison inmate, violate a deceased inmate mother's rights guaranteed by the Fourteenth Amendment to the United States Constitution and *42 U. S. C. § 1983* to recover for loss of society and companionship in connection with the State's unlawful breach of the parent-child relationship?

4. Does *Miss. Code Ann. § 11-46-15(2) (Rev. 2002)*, which prohibits claims for punitive damages, violate the rights of wrongful death heirs of a prison inmate guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and *42 U. S. C. § 1983* to recover punitive damages for violation of the inmate's federal constitutional rights?

## LIST OF ALL PARTIES

The parties to the proceedings below were:

1. Ruby Carter, individually, and on behalf of the wrongful death heirs, beneficiaries, and estate of Stacie Carter, Deceased – plaintiff-petitioner.

2. Ruby Carter, Carl Carter, Alma Y. Carter, Cheryl Denise Carter, and Andrae La'shawn Carter – the wrongful death heirs and beneficiaries of Stacie Carter, Deceased.

3. The Mississippi Department of Corrections and Fred Childs, in his official capacity as Superintendent of the Rankin County, Mississippi Correctional Facility, and in his individual capacity – defendants-respondents.

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## REFERENCE TO OFFICIAL OPINIONS BY LOWER COURTS

Petitioner seeks review, on her petition for writ of certiorari to the Mississippi Supreme Court, of an adverse Decision and Opinion rendered by the Mississippi Supreme Court on November 13, 2003 affirming the Opinion and Order issued by the Circuit Court of Rankin County, Mississippi granting respondents' motion for summary judgment and entering a Final Judgment of Dismissal entered on October 3, 2002. The Decision and Opinion rendered by the Mississippi Supreme Court has not yet been designated for publication. That Decision and Opinion is set out in full at App. 1-18. The Opinion and Order issued by the Circuit Court of Rankin County, Mississippi is unreported and is set out in full at App. 19-29.

## A CONCISE STATEMENT OF THE BASIS FOR JURISDICTION

This Court has jurisdiction pursuant to *28 U. S. C. §§ 2101(c)* and *2403(b)*, and *Sup. Ct. R. 10(b), (c)*, and *13*, to review petitioner's petition for writ of certiorari to the Mississippi Supreme Court concerning the Majority Opinion and Order entered by the Mississippi Supreme Court on November 13, 2003. (App. 1-16). See, *Braxton v. United States*, 500 U. S. 344, 347 (1991) (a primary purpose of certiorari jurisdiction "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law").

The Mississippi Supreme Court Majority Opinion and Order decided important federal questions in a way that

conflicts with the decisions of the United States court of appeals for the Seventh Circuit in *Bell v. City of Milwaukee*, 746 F. 2d 1205 (7th Cir. 1984), the First Circuit in *Miranda v. Munoz*, 770 F. 2d 255 (1st Cir. 1985), and the Eleventh Circuit in *Lancaster v. Monroe County, Alabama*, 116 F. 3d 1419 (11th Cir. 1997), and the United States Supreme Court decisions in *Estelle v. Gamble*, 429 U. S. 97 (1976), *Carlson v. Green*, 446 U. S. 14 (1980), *Farmer v. Brennan*, 511 U. S. 825 (1994), and *Smith v. Wade*, 461 U. S. 30 (1983).

The notifications required by *Sup. Ct. R. 29.4(c)* have been made.

## THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the *Eighth, Eleventh,* and *Fourteenth Amendments to the United States Constitution*, *42 U. S. C. § 1983*, and provisions of the Mississippi Tort Claims Act, *Miss. Code Ann. §§ 11-46-7(1)* and *(2), § 11-46-9(1)(m) (Rev. 2002), § 11-46-15(2) (Rev. 2002)*, and *§ 11-7-13 (Supp. 2003)*. The pertinent text of the constitutional provisions and statutes involved are set out in the appendix. (App. 8-9, 32-35).

## A CONCISE STATEMENT OF THE CASE

This case involves a 22-year-old black prison inmate who died while incarcerated at a prison medical facility with deplorable conditions after suffering a series of seizures for more than two hours without receiving any

professional medical assistance and the right of his wrongful death heirs to sue over his death.

Stacie Carter was a young black male who lived with his mother, Ruby Carter, in Wesson, Mississippi, until he was convicted by the Circuit Court of Lincoln County, Mississippi, on two counts of grand larceny on January 30, 1995 and sentenced to serve two concurrent terms of five (5) years in the custody of the Mississippi Department of Corrections (MDOC). (App. 2, 45-46, 95, 148). Stacie had a history of seizures prior to his conviction. (App. 46, 141-144). He was prescribed and started taking Dilantin for his seizures in July, 1993. (App. 142-144).

After his incarceration, Stacie was sent to the MDOC Facility at Parchman, Mississippi, and then he was moved to the Rankin County Correctional Facility (RCCF) in 1996. (App. 45-48, 95, 142-144). Stacie suffered seizures while incarcerated at both the MDOC Facility at Parchman and the RCCF. (App. 95-96, 142-148). Corrections officials knew about Stacie's seizures at Parchman because he had to be hospitalized there, and his mother called the Superintendent at Parchman and told her about Stacie's seizures. (App. 144-145, 147). Corrections officials transferred Stacie from Parchman to the RCCF to offer better medical care for his seizures.[1] (App. 2, 20, 148).

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[1] Stacie's mother testified:

Q. Okay. And then he left Parchman. You had called and said, Can you get him – can you get him some help or get him to the hospital. They transferred him down to Rankin County.

A. Uh-huh (affirmative).

The RCCF was a new prison medical facility that opened on October 5, 1996 which housed prisoners with serious medical problems. (App. 98, 122-123,127-129, 137). The facility did not have hot water or heat until just before Christmas 1996. (App. 96, 99). Nurses were not available at the facility on a daily or hourly basis. (App. 122, 127). The facility was supposed to have an ambulance and be staffed by physicians and nurses, but there was no ambulance or physician on duty. (App. 109-114, 120, 122-123, 127-129). The correction officers at the facility had not been trained to render medical treatment – not even CPR. (App. 112-113, 115, 127-129). Also, there was a staff shortage of corrections officers to monitor the inmates at the facility. (App. 111-112, 121).

Inmates James Lyle, IV, and Valentino Lewis refer to the 720 Medical Unit at the facility as a "Death Camp." (App. 122, 127). Mr. Lyle had written a letter to the media, elected officials, and judges complaining about the "horrible deficiencies and deplorable medical conditions" at the facility. (App. 122-123, 127-130). Additionally, he complained to prison officials, including the warden and prison guards, about the manpower shortage, (App. 111), and absence of "trained officers that's supposed to have training in medical treatment." (App. 112). Inmate Lyle wrote that "[f]our prisoners have died due to the lack of trained medical staff in prisoner's housing units, lack of emergency equipment in prisoner's housing units, no doctors on staff before 9AM and after 1 PM, no emergency vehicle/ambulance and a trained staff to man it 24/7." (App. 122).

There were about 600 inmates housed at RCCF in January, 1997. (App. 116). Approximately 60-65% of those inmates were African-Americans. (App. 117). Seven

inmates died at the facility between the time it opened on October 5, 1996 and the time Stacie died on January 15, 1997. (App. 117-118). Six of the deceased inmates were African-Americans and one was Caucasian. (App. 117-118).

Stacie was housed at Unit 720, B-2, C-Zone at RCCF. (App. 95). On January 15, 1997, Stacie suffered a seizure in his cell just before supper, and he suffered two (2) additional seizures before 4:00 p.m. (App. 3, 24, 126, 132-134). The facility had a policy that required an inmate to suffer three seizures before the medical unit would be notified. (App. 132-134). Valentino Lewis, an inmate incarcerated with Stacie, went to the guard tower (picket) after Stacie suffered his third seizure and reported the incident to Catherine Burgess, the only guard on duty in the tower. (App. 3, 24, 132-134). Officer Burgess called the clinic several times, but no one responded to her calls. (App. 24, 132-134). Stacie continued having seizures, so Mr. Lewis went back to the picket to report to Officer Burgess that Stacie was still having seizures. (App. 24, 132-137). Finally, Officer Wilson notified Lt. Jackson at 4:00 p. m. that transportation was needed to transport Stacie to the facility's clinic.[2] (App. 126).

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[2] The Mississippi Department of Corrections Unit Register which is used to record all activity at the facility regarding incidents reflects that on January 15, 1997 a late entry was entered in the Register concerning the call to the medical unit for Stacie Carter. The time the call was made was 1600 Hours. (App. 126).

Also, Inmate Valentino Lewis testified that Stacie suffered his first seizure after 3:00 p.m. Mr. Lewis testified as follows:

Q. Okay. After the third seizure, you went and told Officer Burgess that he had had his third seizure.

(Continued on following page)

An S and E officer arrived at Stacie's cell with an army cot after Stacie had suffered seven seizures.[3] (App. 3, 134-135). Two inmates placed Stacie on the cot and ran him to the prison clinic through the sleet. (App. 3, 24, 134-135). "[I]t took more than one hour to get him to the 720 Clinic after he had the first seizure." (App. 127). There

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A. Yes, sir.

Q. Do you know about what time it was? It was before supper, though.

A. It was before supper, because I'm trying to think – I can't remember if it was after 3:00. I can't remember if it was after 3:00, because I was trying – I'm trying to recollect what shift she worked. I believe she worked the 7:00 to 3:00 shift at the time, if I'm not mistaken. But I – I – I can't remember if it was after 3:00 or not, but I know it was before supper.

(App. 133-134).

[3] Mr. Lewis testified:

> Well, she got on – I – she got on the phone and she called the clinic, and then he kept on having his seizures. I went back up there and told her that he was – that he was continuing to have seizures. She got back on the phone. Then we just stood up there, and I started praying. You know what I'm saying? Because like I said, we was all the family. And I started praying, asking for God not to take him and everything.
>
> And then the next thing, Stacie had grabbed my hand and he looked in my eyes, and everything like that. And I was just praying. I was telling him to, 'Hold on. Hold on.' Got up, went back up there and told Officer Burgess again that he was continuing to have seizures, but wouldn't nobody come because they didn't have no ambulance or nothing.
>
> And then when they did finally come, Stacie's – by the time they came, Stacie had had seven seizures before they even came and got him.

(App. 134).

was not a physician at the Clinic. In fact, there were "no doctors on staff before 9AM and after 1 PM . . . " (App. 122). Stacie went into one last seizure at the Clinic "causing him to go into cardiac arrest." (App. 128). A call was not made requesting an ambulance until after Stacie had arrived at the clinic. (App. 138).

At 5:05 p. m., Lt. Kevin Jackson, the Third Watch Commander, was informed by Capt. Patrick Marion, the Institutional Watch Commander, that Stacie needed to be transferred from the clinic to a hospital. (App. 3, 24, 124). An ambulance arrived at about 5:20 p.m., picked Stacie up at the Clinic, and left the facility at 5:40 p.m. taking him to the University Medical Center (UMC) in Jackson. (App. 3, 24-25, 124). The ambulance diverted to Rankin Medical Center at 5:43 p.m. because Stacie experienced medical complications. (App. 3-4, 25, 125). The ambulance arrived at Rankin Medical Center at 6:08 p.m. (App. 25, 126). Stacie died at Rankin Medical Center between 6:14 p.m. and 6:37 p.m. (App. 2, 4, 25, 119, 125). He is survived by his mother, Ruby, and his four (4) brothers and sisters – Carl Carter, Alma Y. Carter, Cheryl Denise Carter, and Andrae La'Shawn Carter. (App. 38, 149-150).

Ruby Carter filed a lawsuit in the Circuit Court of Copiah County, Mississippi against the State of Mississippi and the Mississippi Tort Claims Board on April 20, 1998. The case was transferred to Rankin County Circuit Court, and Mrs. Carter was allowed to amend her complaint twice substituting the MDOC and Fred Childs as defendants and adding federal claims. (App. 2, 20-21, 30-31).

Mrs. Carter filed her second amended complaint on January 30, 2002 in her individual capacity and on behalf of the wrongful death heirs, beneficiaries, and estate of

Stacie Carter, deceased. (App. 36-42). She sued the MDOC and Fred Childs, in his individual and official capacities as the Superintendent of the RCCF,[4] for Stacie's wrongful death. (App. 36-37). Mrs. Carter alleged that Stacie's medical problems required him to be incarcerated at the medical facility at Parchman and that the RCCF did not have an ambulance, equipment, physicians, or medical staff on duty to treat Stacie. (App. 38-39). She alleged that Fred Childs implemented and carried out a policy at the RCCF of not having trained medical staff on duty or an ambulance at the facility to treat and transport inmates. (App. 39). Mrs. Carter demanded $500,000 in damages for the "loss of society and companionship, love and affection, net cash value of [Stacie's] life, and incurred funeral bills." (App. 42). She alleged that the MDOC and Child failed to provide medical care to Stacie which amounted to reckless disregard for Stacie's rights and constituted a tort under State law that was actionable under the Mississippi Tort Claims Act (MTCA).[5] (App. 37-40). She also alleged that a

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[4] The caption of the second amended complaint reflects that Fred Childs was sued in his official capacity as Superintendent of RCCF. (App. 32). However, paragraph no. 3 of the second amended complaint clearly states that Fred Childs "is sued in his individual and official capacity (sic) as the Superintendent of the" RCCF. (App. 33).

[5] The MTCA provides the exclusive remedy against a state governmental entity or its employees "for the act or omission which gave rise to the claim or suit" . . . *Miss. Code Ann. § 11-46-7(1) (Rev. 2002).* (App. 33-34). The Act further provides that a governmental employee may not be "held personally liable for acts or omissions occurring within the course and scope of the employee's duties . . . " *Miss. Code Ann. § 11-46-7(2) (Rev. 2002).* (App. 34). The Mississippi Supreme Court held in this case that "[t]he MTCA provides the exclusive civil remedy against a governmental entity or its employees for tortious acts or omission which give rise to a suit." (App. 6). *Conrod v. Holder*, 825 So. 2d 16, 18-19 (Miss. 2002).

provision of the MTCA, *Miss. Code Ann. § 11-46-9(1)(m) (Rev. 2002),* which precludes prison inmates and their wrongful death heirs from suing violates their rights under the Fourteenth Amendment to the United States Constitution and *42 U. S. C. § 1983.* (App. 37-41). And, she alleged that the MDOC's and Child's policies, actions, and inactions in not providing medical care to Stacie amounted to deliberate indifference of his serious medical needs and violated his rights under the Eighth Amendment to the United States Constitution and *42 U. S. C. § 1983.* (App. 37-40).

The MDOC and Childs moved for summary judgment on Mrs. Carter's federal claims.[6] Mrs. Carter filed a Response opposing the summary judgment motion. (App. 43-64). In her Response, Mrs. Carter detailed record facts evidencing deliberate indifference on the part of the MDOC and Childs to Stacie's serious medical needs and her right to bring the wrongful death lawsuit. (App. 45-53). Those detailed facts included facts about the deplorable prison medical conditions at the RCCF, prison policies concerning medical care for inmates, and the quality of care given other inmates. She argued that Stacie's Eighth and Fourteenth Amendments rights had been violated, (App. 54-56, 60-61), and her Fourteenth Amendment rights of Due Process and Equal Protection had been violated by the MTCA provision, *Miss. Code Ann. § 11-46-9(1)(m) (Rev. 2002).* (App. 57-60).

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[6] They moved for summary judgment on all of Mrs. Carter's claims, including her state law claims. The Circuit Court of Rankin County, Mississippi granted summary judgment on all of Mrs. Carter's claims. (App. 19-29).

The Circuit Court of Rankin County, Mississippi, the trial court, entered an Opinion and Order on October 3, 2002 granting the MDOC's and Childs' summary judgment motion. (App. 19-29). The trial court did not address the deplorable prison medical conditions, prison policies concerning medical care for inmates, nor the quality of care given other inmates. The trial court specifically held that the MDOC and Childs were immune from suit under *Miss. Code Ann. § 11-46-9(1)(m) (Rev. 2002),* because Stacie was an inmate when he died. (App. 21-25). The court also held that "[i]n all of the testimony of MDOC personnel, the Court does not find any evidence of 'deliberate indifference' on the part of defendants in respect to their treatment of Carter." (App. 27). The trial court further held that Mrs. Carter's "claims for punitive damages should be stricken as [she] is not allowed to recover punitive damages in the type of action being alleged against [the MDOC and Childs]." (App. 28).

Mrs. Carter timely appealed the trial court's decision to the Mississippi Supreme Court. (App. 65-92). In her Brief, Mrs. Carter detailed facts concerning the deplorable medical conditions at the RCCF, prison policies concerning medical care for inmates, and the quality of care given other inmates. (App. 68-71). She asserted that the MDOC's and Childs' actions and inactions amounted to deliberate indifference of Stacie's serious medical needs in violation of the Eighth Amendment. (App. 75-76). She also asserted that the MDOC and Childs had violated her rights under the Fourteenth Amendment by unlawfully breaching "the parent-child relationship by virtue of [Stacie's] death . . . " (App. 76-77). Mrs. Carter also argued that the MTCA did not bar her federal claims or claims for punitive damages. (App. 78-79). The MDOC and Childs filed their Brief

opposing Carter's appeal, and Mrs. Carter filed a Reply Brief stating that her claims were not barred by the Eleventh Amendment to the United States Constitution or the MTCA. (App. 82-88). She also argued that Fred Childs had not proven his qualified immunity defense, (App. 88-90), that punitive damages were recoverable in a *§ 1983* action, [*42 U. S. C. § 1983*], (App. 91), and "[i]f the lower court's holding is correct that the MTCA bars such actions, then the MTCA is unconstitutional." (App. 90).

The Mississippi Supreme Court rendered its en banc decision on November 13, 2003 affirming the trial court's Order granting summary judgment in favor of the MDOC and Childs. (App. 1-18). The state Supreme Court did not address evidence presented by petitioner concerning the deplorable medical conditions at the RCCF, prison policies concerning medical care for inmates, or the quality of care given other inmates. Three (3) Justices concurred in the Majority Opinion written by Justice Easley, and the Chief Justice concurred in the results only. (App. 1-16). Justice McRae wrote a Dissenting Opinion joined in by another Justice, and Justice Graves dissented without written opinion. (App. 16-18). Justice Diaz did not participate in the case. The Majority Opinion held that the MTCA barred Mrs. Carter's claims because Stacie was an inmate when he died. The Mississippi Supreme Court stated:

> This Court finds that the trial court did not err in finding that MDOC and Childs, acting within the course and scope of his employment and duties, were immune from liability by virtue of Miss. Code Ann. § 11-46-9(1)(m) since Stacie was an inmate at the time. Likewise, Stacie's wrongful death survivors are not entitled to maintain an action against the MDOC and Childs.

(App. 10-11). The Majority also held that Mrs. Carter had failed to offer sufficient evidence on summary judgment to establish that Stacie had a viable claim under the Eighth Amendment and *§ 1983*. The State Supreme Court held on Carter's Eighth Amendment Claim:

> We find that the trial court did not err by granting summary judgment as to Carter's constitutional claims in favor of the MDOC. As the trial court determined, Carter did not establish that Stacie suffered any constitutional violation. Therefore, this Court finds that since Carter does not clearly establish a constitutional violation this issue is without merit.

(App. 15).

Justice McRae, writing in dissent, wrote that Carter has established an Eighth Amendment violation. (App. 16-18). Justice McRae wrote that "Carter was not only wholly denied adequate and minimal medical care, but the prison guards and officials acted with deliberate indifference in failing to provide him medical care at all until it was too late." (App. 17). Justice McRae further wrote that genuine issues of material fact existed precluding summary judgment. (App. 17). The Majority did not adopt Justice McRae's Opinion.

Mrs. Carter has timely filed her petition for writ of certiorari to the Mississippi Supreme Court.

## ARGUMENT

**1. Lower courts should consider evidence of deplorable medical conditions in a prison facility, prison policies concerning medical care for inmates, and the quality of care given other inmates when deciding whether or not prison officials were deliberately indifferent to the serious medical needs of an inmate in violation of the Eighth Amendment to the United States Constitution and *42 U. S. C. § 1983.***

Petitioner offered the following evidence about the deplorable medical conditions, prison policies concerning medical care for inmates, and the quality of care given other inmates at the RCCF:

a. The RCCF was a "Death Camp" with deplorable medical conditions for inmates where seven (7) inmates had died, six (6) of whom were black, between October 5, 1996 when the facility opened and January 15, 1997 when Stacie died. (App. 111-130).

b. The RCCF had 600-650 inmates, of whom 60-65% were black. (App. 116-117).

c. The prison facility had a policy that required an inmate to suffer three seizures before the medical unit would be notified. (App. 132-134).

d. Nurses were not available at the facility on a daily or hourly basis. (App. 122, 127).

e. There was no ambulance or physician on duty. (App. 109-114, 120, 122-123, 127-129).

f. Funds had been appropriated for an ambulance, but the funds had been misspent. (App. 127-129).

g. The correction officers at the facility had not been trained to render medical treatment – not even CPR. (App. 112-113, 115, 127-129).

h. There was a staff shortage of corrections officers to monitor the inmates at the facility. (App. 111-112, 121).

i. All of the inmates at the RCCF had serious medical needs. (App. 98, 122-123,127-129, 137). And,

j. Corrections officials knew about Stacie's seizures and knowingly transferred him from Parchman which had a prison hospital to the RCCF which did not have a prison hospital. (App. 144-148).

The Mississippi Supreme Court ignored all of this evidence presumptively because the court did not consider the evidence relevant to the issue of determining whether or not prison officials were deliberately indifferent to Stacie's serious medical needs.

The Mississippi Supreme Court's refusal to consider this evidence conflicts with the decision of the United States court of appeals for the First Circuit in *Miranda v. Munoz*, supra, where the court considered evidence of general prison conditions in deciding that government officials were deliberately indifferent about the serious medical needs of a prisoner who died due to lack of medical treatment. *Miranda v. Munoz*, supra. The First Circuit also considered prison policies pertaining to providing

medical care for prisoners in deciding whether or not the Eighth Amendment had been violated. *Id.* at 257-261.

As such, this Court should grant petitioner's petition for a writ of certiorari to the Supreme Court of Mississippi on this issue to resolve a conflict between the Mississippi Supreme Court and the United States court of appeals for the First Circuit. See, *Braxton v. United States*, supra, at 347; *Sup. Ct. R. 10(b).*

**2. The policies and actions of prison officials in not having an ambulance, physician, or nurse on duty at a prison medical facility and in not providing any treatment by a physician or nurse to a prison inmate who died after suffering more than seven seizures over a two hour period amounted to "deliberate indifference" to a substantial risk of serious harm to the inmate, in violation of the Eighth Amendment to the United States Constitution and *42 U. S. C. § 1983.***

The MDOC housed inmates with serious medical needs at the RCCF without an ambulance, physicians on duty during regular business hours, 8:00 a.m. to 5:00 p.m., emergency equipment, or staff trained to render emergency medical care. (App. 98, 109-114, 120-129, 137, 148). Seven inmates died at the RCCF between the time it opened on October 5, 1996 and January 15, 1997, six of whom were African-American. (App. 117-118). Inmates referred to the facility as a "Death Camp." (App. 122, 127). The MDOC and Superintendent Childs had a policy of not calling for an ambulance for an inmate who suffered seizures until after the inmate had suffered three (3) seizures. (App. 132-134). MDOC officials knew that Stacie

suffered seizures before he was sent to the RCCF. (App. 144-147). In fact, that is the reason he was sent to the RCCF – because he suffered seizures. (App. 148).

Stacie had three (3) seizures in his cell before 4:00 p.m. on January 15, 1997, and Inmate Valentino Lewis notified Corrections Officer Catherine Burgess who called the facility's clinic. (App. 126, 132-134). No one at the clinic responded to her call. Officer Wilson notified Lt. Jackson at 4:00 p.m. that Stacie needed to be taken to the clinic. (App. 126). Stacie continued to suffer seizures in his cell for more than one hour before he was taken to the clinic. (App. 127, 134-135). Stacie suffered seven (7) seizures before corrections officers had him transferred from his cell to the clinic. (App. 134-135). There was not a physician at the clinic, and Stacie had one final seizure before he went into cardiac arrest. (App. 122, 128). An ambulance was not requested for Stacie until after he arrived at the prison clinic. (App. 138). An ambulance arrived at the clinic at 5:20 p.m., picked Stacie up, left the clinic at 5:40 p.m. (App. 124), and took him to the Rankin County Medical Center (hospital) at 6:08 p.m. (App. 126). Stacie died between 6:14 p.m. and 6:37 p.m. (App. 119, 125).

This Court in *Estelle v. Gamble*, 429 U. S. 97 (1976), held that prison officials' deliberate indifference to the serious medical needs of prisoners violate the Eighth Amendment. The Court then held in *Farmer v. Brennan*, 511 U. S. 825 (1994), that an inmate may prove a prison official's deliberate indifference by proving the official knew of and disregarded an excessive risk to an inmate's health or safety. Consistent with these holdings, the United States court of appeals for the Eleventh Circuit has held that prison officials knowledge that an inmate's "condition was either life-threatening or urgent and would

be significantly exacerbated by delaying treatment until after the first seizure . . . amounted to deliberate indifference."[7] *Lancaster v. Monroe County, Alabama*, 116 F. 3d 1419, 1425 (11th Cir. 1997). The decisions of the Mississippi Supreme Court, (App. 1-16), and the Rankin County Circuit Court, (App. 19-29), conflict with *Lancaster*, supra. Essentially, these state court decisions held that prison officials' failure to provide adequate medical care when they had knowledge that Stacie's condition was either life-threatening or urgent and would be significantly exacerbated by delaying treatment until after the first seizure did not amount to deliberate indifference.[8] (App. 1-16, 19-29).

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[7] Although the facts in *Lancaster*, supra, involved a pre-trial detainee and the court there analyzed the "deliberate indifference" standard under the Fourteenth Amendment, the court applied the same standard utilized under the Eighth Amendment used to determine whether prison officials actions amounted to "deliberate indifference." The *Lancaster* court held:

> We have held that the minimum standard for providing medical care to a pre-trial detainee under the Fourteenth Amendment is the same as the minimum standard required by the Eighth Amendment for a convicted prisoner: both the right to due process and the right to be free from cruel and unusual punishment are violated by a government official's deliberate indifference to serious medical needs. *See Hamm v. Dekalb County*, 774 F. 2d 1567, 1573-74 (11th Cir. 1985). Because both Eighth Amendment cases and Fourteenth Amendment cases establish what constitutes 'deliberate indifference,' we will rely upon decisions in both types of cases.

*Lancaster*, supra, at 1425, fn. 6.

[8] Petitioner's claims are not barred by the Eleventh Amendment to the United States Constitution either. The Eleventh Amendment does not bar a *§ 1983* action against a state official sued in his individual capacity. *Hafer v. Melo*, 502 U. S. 21 (1991). Petitioner sued Childs in his official and individual capacities. (App. 37, 84).

(Continued on following page)

The Mississippi Supreme Court's decision, (App. 1-16), and the Rankin County Circuit Court's decision, (App. 19-29), also conflict with the decision rendered by the United States court of appeals for the First Circuit in *Miranda v. Munoz*, 770 F. 2d 255 (1st Cir. 1985) (App. 89). In *Miranda*, supra, the First Circuit held that the policies of prison officials who had a state statutory obligation to provide adequate medical and hospital care for inmates was deliberately indifferent when those policies resulted in extremely poor prison conditions and failed to provide adequate medical treatment for an inmate suffering epileptic seizures. *Id.* at 257-261. Although Mr. Childs, as Superintendent, did not have a statutory obligation to provide adequate medical and hospital care for inmates, he had an obligation imposed by the common law of Mississippi to provide such care. The Mississippi Supreme Court held in *McFadden v. State*, 542 So. 2d 871 (Miss. 1989), that state common law imposed an obligation on the Superintendent to provide for prisoners medical needs. There, the State Supreme Court expressly held:

> Though not expressly declared by statute, our law imposes upon the Commissioner and Superintendent, respectively, general duties of a supervisory and discretionary nature, for the medical care and treatment of prisoners.

*McFadden v. State*, supra, at 879.

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Furthermore, the MTCA provides a remedy to non-prisoners for federal constitutional violations. *Foster v. Noel*, 715 So. 2d 174 (Miss. 1998) (en banc). The MTCA does not provide a remedy to prisoners for federal constitutional violations. *Love v. Sunflower County Sheriff's Department*, 860 So. 2d 797 (Miss. 2003) (en banc). The Supremacy Clause mandates that Mississippi be consistent and provide a remedy to prisoners and non-prisoners alike. *Howlett v. Rose*, 496 U. S. 356 (1990).

In the instant case, the state courts essentially held that the policies of prison officials who had an obligation under state law to provide adequate medical and hospital care for inmates was not deliberately indifferent when those policies resulted in extremely poor prison conditions and failed to provide adequate medical treatment to Stacie while he suffered a series of seizures. (App. 1-16, 19-29). These holdings conflict with the First Circuit's decision *Miranda v. Munoz*, supra.[9]

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[9] The facts giving rise to the Eighth Amendment claim in this case are similar to the facts giving rise to the Eighth Amendment claim in *Carlson v. Green*, supra, at 17, fn. 1. In *Carlson*:

> . . . respondent alleged that petitioners, being fully apprised of the gross inadequacy of medical facilities and staff at the Federal Correction Center in Terre Haute, Ind., and of the seriousness of Jones' chronic asthmatic condition, nonetheless kept him in that facility against the advice of doctors, failed to give him competent medical attention for some Eighth hours after he had an asthmatic attack, administered contra-indicated drugs which made his attack more severe, attempted to use a respirator known to be inoperative which further impeded his breathing, and delayed for too long a time his transfer to an outside hospital. The complaint further alleges that Jones' death resulted from these acts and omissions, that petitioners were deliberately indifferent to Jones' serious medical needs, and that their indifference was in part attributable to racial prejudice.

*Id.* at 17, fn. 1. In the present case, petitioner offered similar proof:

> the respondents were fully aware of the gross inadequacy of the medical facilities and staff at the RCCF, Stacie's seizure condition, failed to give him competent medical attention, transferred him from a hospital to the RCCF with no hospital, doctors, or ambulance, and knowingly permitted him to suffer more than seven (7) seizures before moving him to the prison clinic and calling an ambulance, and having no medical staff present to administer CPR or any emergency medicine. Petitioner also offered proof that the facility housed prisoners with serious medical

(Continued on following page)

As such, this Court should grant petitioner's petition for a writ of certiorari to the Supreme Court of Mississippi on this issue to resolve a conflict between the Mississippi Supreme Court and the United States court of appeals for the First and Eleventh Circuits. See, *Braxton v. United States*, supra, at 347; *Sup. Ct. R. 10(b)*.

**3. A *Miss. Code Ann. § 11-46-9(1)(m) (Rev. 2002)*, which bars claims by wrongful death heirs of a prison inmate, violates a deceased inmate mother's rights guaranteed by the Fourteenth Amendment to the United States Constitution and *42 U. S. C. § 1983* to recover for loss of society and companionship in connection with the State's unlawful breach of the parent-child relationship.**

Stacie, a young black male, lived at home with his mother, Ruby, until he was incarcerated in 1995. (App. 2, 45-46, 95, 148). He was 22 years old when he died in prison on January 15, 1997.[10] (App. 68). He was survived by his mother and four (4) brothers and sisters. (App. 38, 149-150). He did not have a wife or children.

Stacie's mother filed a wrongful death and *§ 1983* action against the MDOC and Childs, Superintendent of the RCCF, asserting state law and federal constitutional claims. (App. 36-43). She sought to recover $500,000 in damages for the "loss of society and companionship, love and affection, net

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needs, was 60-65% black, and seven (7) inmates died between the time the facility opened on October 5, 1996 and the time Stacie died January 15, 1997, six (6) of whom were black.

[10] Stacie was born December 6, 1974. (App. 68).

cash value of [Stacie's] life, and incurred funeral bills." (App. 42). The Mississippi Wrongful Death Statute, *Miss. Code Ann. § 11-7-13 (Supp. 2003)*, grants wrongful death heirs the right to recover damages for loss of society and companionship and funeral expenses from those responsible for the death of their loved ones. *Gatlin v. Methodist Medical Center, Inc.*, 772 So. 2d 1023, 1030-1033 (Miss. 2000). However, the Mississippi Supreme Court and the Rankin County Circuit Court held in the present case that the MTCA, *Miss. Code Ann. § 11-46-9(1)(m) (Rev. 2002),* barred Mrs. Carter's wrongful death lawsuit because Stacie was a prison inmate when he died. (App. 1-16, 19-29). These decisions conflict with a decision rendered by the United States court of appeals for the Seventh Circuit in *Bell v. City of Milwaukee*, supra. There, the Seventh Circuit held that the parent of an adult child had a constitutionally protected liberty interest under the Fourteenth Amendment in the continued association with his child, and consequently, the parent had a right under *§ 1983* to recover damages for loss of society and companionship and funeral expenses from state actors who unlawfully breached the parent-child relationship by virtue of the child's death.[11] *Bell v. City of Milwaukee*, supra, at 1241-1248. Both the Mississippi Supreme Court and the Rankin County Circuit Court ignored the reasoning and holding in *Bell v. City of Milwaukee*, supra, at 1241-1248.

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[11] The Seventh Circuit held the parent-child relationship was still constitutionally protected although the child was 21 years old at the time of death. Pivotal facts for this determination were that the child was single with no children when he died and he had not become part of another family unit. *Bell v. City of Milwaukee*, supra, at 1245. In the present case, Stacie was 22 when he died. He was single with no spouse or children, and he had not become part of another family unit. (App. 148-150).

The state court decisions conflict with the Seventh Circuit's decision in *Bell v. City of Milwaukee*, supra.

As such, this Court should grant petitioner's petition for a writ of certiorari to the Supreme Court of Mississippi on this issue to resolve a conflict between the Mississippi Supreme Court and the United States court of appeals for the Seventh Circuit. See, *Braxton v. United States*, supra, at 347; *Sup. Ct. R. 10(b)*.

**4. A *Miss. Code Ann. § 11-46-15(2) (Rev. 2002)*, which prohibits claims for punitive damages, violates the rights of wrongful death heirs of a prison inmate guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and *42 U. S. C. § 1983* to recover punitive damages for violation of the inmate's federal constitutional rights.**

The Rankin County Circuit Court held that petitioner's claim for punitive damages was precluded by the MTCA, *Miss. Code Ann. § 11-46-15(2) (Rev. 2002)*. (App. 28). One of the issues asserted by petitioner on appeal to the Mississippi Supreme Court was whether or not the MTCA precluded her claim for punitive damages. (App. 66). She sued Childs in his individual capacity for violation of Stacie's constitutional rights. Her claim for punitive damages was not barred by the MTCA. (App. 79). The Mississippi Supreme Court did not address this issue in its decision. (App. 1-16). Nevertheless, this Court has held that an inmate could recover punitive damages against a state official sued in his individual capacity for reckless or careless disregard or deliberate indifference of the inmate's rights. *Smith v. Wade*, supra.

This Court should grant petitioner's petition for a writ of certiorari to the Supreme Court of Mississippi on this

issue because the Rankin County Circuit Court has decided an important federal question in a way that conflicts with this Court's decision in *Smith v. Wade*, supra. See, *Sup. Ct. R. 10(c)*.

## CONCLUSION

This Court should grant petitioner's petition for a writ of certiorari to the Supreme Court of Mississippi on all four (4) questions presented because the Majority Opinion of the Mississippi Supreme Court conflicts with decisions of United States court of appeals for the First, Seventh, and Eleventh Circuits and relevant decisions of this Court. *Sup. Ct. R. 10(b)* and *(c)*. Upon granting the petition, this Court should enter a Per Curiam Order reversing and remanding the case with instructions to the Mississippi Supreme Court pursuant to *Sup. Ct. R. 16(1)*, or in the alternative, schedule the case for briefing and oral argument pursuant to *Sup. Ct. R. 16(2)*.

Dated January 20, 2004.

Respectfully submitted,

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**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2002-CA-01726-SCT**

***RUBY CARTER, INDIVIDUALLY, AND ON BEHALF OF THE WRONGFUL DEATH HEIRS AND BENEFICIARIES, AND ESTATE OF STACIE CARTER, DECEASED***

*v.*

***MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FRED CHILDS, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE RANKIN COUNTY, MISSISSIPPI CORRECTIONAL FACILITY***

| | |
|---|---|
| DATE OF JUDGMENT: | 10/3/2002 |
| TRIAL JUDGE: | HON. WILLIAM E. CHAPMAN, III |
| COURT FROM WHICH APPEALED: | RANKIN COUNTY CIRCUIT COURT |
| ATTORNEY FOR APPELLANT: | CARROLL RHODES |
| ATTORNEYS FOR APPELLEES: | MICHAEL JEFFREY WOLF<br>JAMES D. HOLLAND |
| NATURE OF THE CASE: | CIVIL – WRONGFUL DEATH |
| DISPOSITION: | AFFIRMED – 11/13/2003 |
| MOTION FOR REHEARING FILED: | |
| MANDATE ISSUED: | |

**EN BANC.**

**EASLEY, JUSTICE, FOR THE COURT:**

## PROCEDURAL HISTORY

¶ 1. Individually and on behalf on [sic] the wrongful death heirs and the estate of Stacie Carter (Stacie), Ruby

Carter (Carter) filed suit against the Mississippi Department of Corrections (MDOC) and Fred Childs (Childs), Superintendent of the Central Mississippi Correctional Center in Rankin County (CMCC), in the Circuit Court of Copiah County, Mississippi. The Circuit Court of Copiah County transferred the case to the Circuit Court of Rankin County. The trial court allowed Carter to amend her original complaint on two occasions.

¶ 2. The trial court conducted a hearing on the MDOC and Childs' motion to dismiss or alternatively, for summary judgment. The trial court granted the motion to dismiss, or alternatively, for summary judgment and dismissed the second amended complaint with prejudice. The trial court certified the judgment as final as to the MDOC and Childs, in his official capacity as superintendent of the CMCC, pursuant to M.R.C.P. 54(b). Carter timely appealed the decision to this Court.

## FACTS

¶ 3. Stacie Carter died at 6:37 p.m., on January 15, 1997, at the Rankin County Medical Center in Brandon, Mississippi. At the time of his death, Stacie was an inmate at the CMCC in Rankin County, Mississippi. Stacie had been convicted for burglary and robbery by the Lincoln County Circuit Court and sentenced on January 30, 1995, to serve two concurrent terms of five years in the custody of the MDOC. Stacie was initially moved from the Lincoln County Sheriff's Department to the MDOC facility at Parchman, Mississippi, and then he was transferred to the CMCC in Rankin County.

¶ 4. Stacie was prescribed and provided the drug, Dilantin, to control his seizures. According to inmate Valentine Lewis (Lewis), Stacie had his first seizure before supper.[1] Lewis reported the seizures to the guard on duty, Catherine Burgess (Officer Burgess), after Stacie suffered his third seizure.

¶ 5. Lewis testified that each time he went to Officer Burgess he observed Officer Burgess "get on the phone and call," but he did not stay to see if she got anyone. According to Lewis, a S and E Officer came with an army cot.[2] Stacie had seven seizures by the time the S and E Officer arrived. Lewis estimated that 30 minutes passed before the S and E officer arrived. Lewis testified that about 20 minutes passed after the officer arrived before Stacie was moved. Two inmates helped Stacie to an army cot and carried him to the clinic. No one was in the clinic.

¶ 6. At approximately 5:05 p.m., Lt. Kevin Jackson (Lt. Jackson), the third watch commander, informed Capt. Patrick Marion (Capt. Marion), the institution watch commander, that Stacie needed to be transferred by ambulance from the clinic to the University of Mississippi Medical Center (UMMC) for medical treatment.

¶ 7. At approximately 5:20 p.m., the ambulance arrived with EMS operators. At approximately 5:40 p.m., the ambulance left the grounds with Stacie and Officer Kurt Wilson as escort. At approximately 5:43 p.m., Lt. Jackson was notified by Capt. Marion that medical complications

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[1] Lewis testified that supper was normally at approximately 5:00 p.m. everyday.

[2] The record did not identify the meaning of the initials, S and E.

arose during transport. Due to complications, Stacie was routed to the closest hospital, Rankin Medical Center. Lt. Jackson was notified that at approximately 6:37 p.m., Stacie had died at Rankin County Medical Center.

¶ 8. On appeal, Carter raises the following issues:

**I. Whether the trial court erred in determining that the MDOC and Childs were immune from liability pursuant to Miss. Code Ann. § 11-46-9(1)(m).**

**II. Whether the trial court erred in determining that Carter had failed to establish any constitutional right violations.**

## DISCUSSION

### I. Miss. Code Ann. § 11-46-9(1)(m)

¶ 9. Carter contends that the trial court erred in granting summary judgment to the MDOC and Childs based on their immunity from liability pursuant to Miss. Code Ann. § 11-46-9(1)(m).

¶ 10. This Court applies a de novo standard of review on appeal from a grant of summary judgment by the trial court. ***Jenkins v. Ohio Cas. Ins. Co.***, 794 So.2d 228, 232 (Miss. 2001); ***Russell v. Orr***, 700 So.2d 619, 622 (Miss. 1997); ***Richmond v. Benchmark Constr. Corp.***, 692 So.2d 60, 61 (Miss. 1997); ***Northern Elec. Co. v. Phillips***, 660 So.2d 1278, 1281 (Miss. 1995). Rule 56(c) of the Mississippi Rules of Civil Procedure provides that summary judgment shall be granted by a court if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact. . . ."

M.R.C.P. 56(c). The moving party has the burden of demonstrating that there is no genuine issue of material fact in existence, while the non-moving party should be given the benefit of every reasonable doubt. ***Tucker v. Hinds County,*** 558 So.2d 869, 872 (Miss. 1990). *See also* ***Heigle v. Heigle,*** 771 So.2d 341, 345 (Miss. 2000). "If, in this view, there is no genuine issue of material fact and, the moving party is entitled to judgment as a matter of law, summary judgment should forthwith be entered in his favor. Otherwise, the motion should be denied." ***Williamson v. Keith,*** 786 So.2d 390, 393 (Miss. 2001). "Issues of fact sufficient to require denial of a motion for summary judgment obviously are present where one party swears to one version of the matter in issue and another says the opposite." ***Tucker,*** 558 So.2d at 872.

> Of importance here is the language of the rule authorizing summary judgment 'where there is no genuine issue of *material* fact.' The presence of fact issues in the record does not per se entitle a party to avoid summary judgment. The court must be convinced that the factual issue is a material one, one that matters in an outcome determinative sense . . . the existence of a hundred contested issues of fact will not thwart summary judgment where there is no genuine dispute regarding the material issues of fact.

***Simmons v. Thompson Mach. of Miss., Inc.,*** 631 So.2d 798, 801 (Miss. 1994) (citing ***Shaw v. Burchfield,*** 481 So.2d 247, 252 (Miss. 1985)). The evidence must be viewed in the light most favorable to the non-moving party. *See* ***Northern Elec. Co.,*** 660 So.2d at 1281; ***Russell,*** 700 So.2d at 622; ***Richmond,*** 692 So.2d at 61; ***Simmons,*** 631 So.2d at 802; ***Tucker,*** 558 So.2d at 872.

¶ 11. The MTCA provides the exclusive civil remedy against a governmental entity or its employee for tortious acts or omission which give rise to a suit. Miss. Code Ann. § 11-46-7(1) (Rev. 2002); ***City of Tupelo v. Martin***, 747 So.2d 822, 826 (Miss. 1999); ***Pickens v. Donaldson***, 742 So.2d 684, 687 (Miss. 1999).

¶ 12. Miss. Code Ann. § 11-46-9 provides immunity from liability to the state and its political subdivisions for certain specific enumerated actions or inactions by the state or its employees. Miss. Code Ann. § 11-46-9(1)(m) states:

> (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:
>
> (m) Of an [sic] claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed;

¶ 13. In its opinion and order granting summary judgment, the trial court held that section 11-46-9(1)(m) barred this action against the MDOC and Superintendent Childs.

¶ 14. Carter concedes that Miss. Code Ann. § 11-46-9(1)(m) bars the claims of a state inmate. However, Carter argues that "the wrongful death claims of [the] wrongful death survivors are distinct torts from the personal injury claims of inmates." Carter also contends that the denial of

the wrongful death heirs of an inmate to bring suit amounts to constitutional violations of the due process clause and the equal protection clause.

¶ 15. In support of her position, Carter cites ***Gentry v. Wallace,*** 606 So.2d 1117 (Miss. 1992), out of context. In ***Gentry,*** this Court was actually addressing when the statute of limitations began to run in a wrongful death claim. This Court reasoned that:

> Had Mary Gentry lived to bring a medical negligence action for the personal injuries she sustained, the clock would have begun to tick on March 1, the date she might have reasonably discovered the negligence of her physicians. However, this is a wrongful death action brought by John Billy Gentry in his capacity as his mother's sole surviving heir. **Wrongful death is a separate distinct cause of action, which can be brought only by the survivors of the deceased.** Miss. Code Ann. § 11-7-13 (1972 and Supp. 1991). Without and until the death of Mary Gentry, there was no cause of action under the wrongful death statute to trigger the two year statute of limitations. Further, under the statute, the limitations period does not begin to run until the heir knows or should reasonably know about the medical negligence which caused the death.

***Gentry,*** 606 So.2d at 1119 (emphasis added).

¶ 16. Contrary to Carter's position that the wrongful death survivors have a separate tort from that of the deceased inmate, Miss. Code Ann. § 11-7-13 (Supp. 2003) clearly states that wrongful death beneficiaries are entitled to maintain an action and recover damages as would the decedent if death had not ensued:

Whenever the death of any person shall be caused by any real, wrongful or negligent act or omission, or by such unsafe machinery, way or appliances as would, **if death had not ensued, have entitled the party injured or damaged thereby to maintain an action and recover damages in respect thereof**, or whenever the death of any person shall be caused by the breach of any warranty, express or implied, of the purity or fitness of any foods, drugs, medicines, beverages, tobacco or any and all other articles or commodities intended for human consumption, **as would, had the death not ensued, have entitled the person injured or made ill or damaged thereby, to maintain an action and recover damages in respect thereof**, and such deceased person shall have left a widow or children or both, or husband or father or mother, or sister, or brother, the person or corporation, or both **that would have been liable if death had not ensued**, and the representatives of such person shall be liable for damages, notwithstanding the death, and the fact that death was instantaneous shall in no case affect the right of recovery. The action for such damages may be brought in the name of the personal representative of the deceased person for the benefit of all persons entitled under the law to recover, or by widow for the death of her husband, or by the husband for the death of his wife, or by the parent for the death of a child, or in the name of a child, or in the name of a child for the death of a parent, or by a brother for the death of a sister, or by a sister for the death of a brother, or by a sister for the death of a sister, or a brother from

> the death of a brother, or all parties interested may join in the suit . . .

Miss. Code Ann. § 11-7-13 (emphasis added).

¶ 17. In ***Webb v. DeSoto County,*** 843 So.2d 682 (Miss. 2003), this Court recently addressed a similar situation. Michael Chambers was found dead in his cell while incarcerated at the DeSoto County Detention Center. Chambers's parents, Donna Webb and Robert Chambers, filed a wrongful death suit against DeSoto County and others. This Court upheld the trial court's dismissal of the claim finding that Miss. Code Ann. § 11-46-9(1)(m) barred suits by inmates or their wrongful death beneficiaries. ***Id.*** at 684-85. In ***Webb,*** we stated:

> Webb and Chambers attempt to circumvent Miss. Code Ann. § 11-46-9(1)(m) by alleging that an action for wrongful death is an independent cause of action; therefore, placing them in a position different from the decedent. However, this Court has found that a wrongful death suit is a derivative action by the beneficiaries, and those beneficiaries, therefore, stand in the position of their decedent. *See* ***Wickline v. U.S. Fid. & Guar. Co.,*** 530 So.2d 708, 715 (Miss. 1988).
>
> Webb and Chambers stand in the position of Michael Chambers. Therefore, Webb and Chambers are only entitled to the remedy afforded to Michael Chambers if he had survived. Since § 11-46-9(1)(m) provides him with no remedy, so it also prevents a suit by his heirs. Webb and Chambers are unable to bring a wrongful death suit on behalf of a prisoner who dies while incarcerated. For the aforementioned reasons, we find no reversible error.

> Webb and Chambers argue that the waive of immunity contained in § 11-46-5 supercedes the specific types of immunity set forth in § 11-46-9. Miss. Code Ann. § 11-46-5 provides in pertinent part:
>
> > (1) Notwithstanding the immunity granted in § 11-46-3, or the provisions of any other law to the contrary, the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions; provided, however, immunity of a governmental entity is [sic] any such case shall be waived only to the extent of the maximum amount of liability provided for in § 11-46-15.
>
> This contention by Webb and Chambers is not supported by any applicable case law. Failure to cite legal authority in support of an issue is a procedural bar on appeal. ***McClain v. State,*** 625 So.2d 774, 781 (Miss. 1993).

843 So.2d at 684-85.

¶ 18. This Court finds that the trial court did not err in finding that MDOC and Childs, acting within the course and scope of his employment and duties, were immune from liability by virtue of Miss. Code Ann. § 11-46-9(1)(m) since Stacie was an inmate at the time. Likewise, Stacie's

wrongful death survivors are not entitled to maintain an action against the MDOC and Childs.

## II. Carter's Constitutional Claim

¶ 19. State courts have concurrent subject matter jurisdiction with federal courts over 42 U.S.C. § 1983 claims. ***Martinez v. California***, 444 U.S. 277, 284, 100 S.Ct. 553, 558, 62 L.Ed.2d 481 (1980). In ***Martinez***, the Court further stated:

> [A]s we recently held in ***Baker v. McCollan***, 443 U.S. 137, 99 S.Ct. 2689, 61 L.Ed.2d 433, "[t]he first inquiry in any § 1983 suit . . . is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws of the United States.'" The answer to that inquiry disposes of this case.

444 U.S. at 284.

¶ 20. Summary judgment on claims raised pursuant to § 1983 is reviewed de novo as any other summary judgment to inquire if the trial court properly granted the motion for summary judgment. *See* ***Mallery v. Taylor***, 805 So.2d 613, 620 (Miss. Ct. App. 2002). *See also* ***Jenkins v. Ohio Cas. Ins. Co.***, 794 So.2d at 232 (this Court applies a de novo standard of review on appeal from a grant of summary judgment.).

¶ 21. Carter contends that the facts establish an Eighth Amendment claim, a Due Process Clause and an Equal Protection Clause violation. Carter argues that Childs and the MDOC are liable due to their deliberate indifference to the serious medical needs of the prisoners proscribed in the Eighth Amendment.

¶ 22. In ***Will v. Michigan Department of State Police,*** 491 U.S. 58, 71, 109 S.Ct. 2304, 2312, 105 L.Ed.2d 45 (1989), the United States Supreme Court stated that:

> Obviously, state officials literally are persons. But a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. ***Brandon v. Holt,*** 469 U.S. 464, 471, 105 S.Ct. 873, 877, 83 L.Ed.2d 878 (1985). As such, it is no different from a suit against the State itself. *See, e.g.* ***Kentucky v. Graham,*** 473 U.S. 159, 165-66, 105 S.Ct. 3099, 3104-3105, 87 L.Ed.2d 114 (1985).

¶ 23. In ***Monell v. Department of Social Services,*** 436 U.S. 658, 690-91, 694, 701, 98 S.Ct. 2018, 2035-37, 2041, 56 L.Ed.2d 611 (1978), the United States Supreme Court held that local governmental bodies were subject to § 1983 liability where a violation of federal rights results from the enforcement of a governmental policy or custom. However, ***Monell*** refused to extend governmental liability based upon the doctrine of respondeat superior merely because it employed a tortfeasor. 436 U.S. at 691-92.

¶ 24. In order to establish liability for a § 1983 violation, either on the part of the individual official or a governmental body, the plaintiff's harm must have been caused by a constitutional violation. *See* ***Collins v. City of Harker Heights,*** 503 U.S. 115, 120, 112 S.Ct. 1061, 1066, 117 L.Ed.2d 261 (1992). In ***City of Los Angeles v. Heller,*** 475 U.S. 796, 799, 106 S.Ct. 1571, 1573, 89 L.Ed.2d 806 (1986), the United States Supreme Court stated that if "no constitutional injury [was inflicted] on [the] respondent, it is inconceivable that [the] petitioners could be liable to [the] respondent."

¶ 25. In the case sub judice, the trial court found that Carter failed to meet her burden in order to establish that the MDOC acted or failed to act within the requisite deliberate indifference to medical treatment for Stacie. The trial court stated:

> Plaintiff [Carter] claims defendants violated Carter's [Stacie's] constitutional rights through their deliberate, intentional, malicious and reckless disregard for his rights, and by having an arbitrary and capricious policy of not providing physicians, medical staff, medical treatment, medical facilities and ambulances to inmates.
>
> After the plaintiff in ***Wallace*** argued a violation of the Remedy, Due Process and Equal Protection Clauses of the Mississippi and United States Constitutions, the Mississippi Supreme Court recognized in ***Wallace*** that in ***Robinson v. Stewart,*** 655 So.2d 866 (Miss. 1995), it had held the remedy clause, Miss. Const. art. 3, § 24, does not conflict with sovereign immunity, does not require exceptions to sovereign immunity and does not grant an absolute guarantee of a trial. ***Wallace*** at ¶ 10 (citing ***Robinson*** at 868-869 citing ***Grimes v. Pearl River Valley Water Supply Dist.,*** 930 F.2d 441 (5th Cir.)). The Supreme Court has further stated that:
>
> > [i]n ***Robinson,*** this Court also held sovereign immunity did not violate due process. 655 So.2d at 869. "A due process violation requires the infringement of a liberty or property right." ***Id.*** at 869 (citing ***Tucker v. Hinds County,*** 558 So.2d 869, 873 (Miss. 1990)). Because the right to sue the State has been withheld through the statutes by

> the Legislature, there is no property right to sue the State or other governmental entities and, therefore, no due process violation of the Mississippi Constitution. ***Robinson,*** 655 So.2d at 869. The same analysis applies to the United States Constitution because state law defines property interests, and the Mississippi Legislature has continuously denied any exceptions to overcome sovereign immunity. ***Grimes,*** 930 F.2d at 444.

***Wallace*** at ¶ 11.

The Supreme Court continued to state that:

> [i]f the statute is found to be rationally related to a legitimate purpose, "equal protection is not violated by conferring benefits on some and not all of the people of the state." ***Mosby v. Moore,*** 716 So.2d 551, 556 (Miss. 1998). The Legislature had a legitimate purpose in protecting governmental entities from claims brought by inmates, thus there is not equal protection violation in denying prison inmates certain rights granted to law-abiding citizens. The court in ***Grimes*** also held the sovereign immunity statute did not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. 930 F.2d at 444.

***Wallace*** ¶ 12.

The United State [sic] Court of Appeals for the Fifth Circuit has declared:

> (1) that the state owes the same duty under the Due Process Clause and the Eighth Amendment to provide both

> pretrial detainees and convicted inmates with basic human needs, including medical care and protection from harm, during their confinement; and (2) a state jail official's liability for episodic acts or omissions cannot attach unless the official had subjective knowledge of a substantial risk of serious harm to a pretrial detainee, but responded with deliberate indifference to that risk.

***Hare v. City of Corinth,*** 135 F.3d 320 (5th Cir. 1998) quoting ***Hare v. City of Corinth,*** 74 F.3d 633 (5th Cir. 1996).

> The standard the Court has applied in reviewing the alleged Eight [sic] Amendment rights violations, specifically involving denial or interference with the medical needs of Carter, is the above "deliberate indifference" standard. In all of the testimony of plaintiff and her children, the known wrongful death beneficiaries of Carter, and the testimony of MDOC personnel, the Court does not find any evidence of "deliberate indifference" on the part of defendants in respect to their treatment of Carter. Pursuant to ***Hare,*** plaintiff has the burden of showing that the MDOC acted or failed to act with "deliberate indifference" to the "basic human needs" of Carter. Plaintiff has failed to make such a showing.

¶ 26. We find that the trial court did not err by granting summary judgment as to Carter's constitutional claims in favor of the MDOC. As the trial court determined, Carter did not establish that Stacie suffered any constitutional violation. Therefore, this Court finds that since Carter does not clearly establish a constitutional violation this issue is without merit.

## CONCLUSION

¶ 27. For the foregoing reasons, the judgment of the Circuit Court of Rankin County is affirmed.

¶ 28. **AFFIRMED.**

**SMITH, P.J., COBB AND CARLSON, JJ., CONCUR. PITTMAN, C.J., CONCURS IN RESULT ONLY. GRAVES, J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION. McRAE, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY WALLER, J. DIAZ, J., NOT PARTICIPATING.**

**McRAE, PRESIDING JUSTICE, dissenting:**

¶ 29. The majority's holding today all but eliminates an inmate's constitutional right to receive medical treatment while incarcerated. It is contrary to the very constitutional principles which have been laid down by the United States Supreme Court. For this reason, I dissent.

¶ 30. Under the Eighth Amendment of the United States Constitution, Carter, as a detained inmate, was guaranteed reasonable and adequate medical care. *See* ***Estelle v. Gamble,*** 429 U.S. 97, 103, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). In order for an inmate to prevail on an Eighth Amendment claim, he must prove that prison officials exercised "deliberate indifference to a serious medical condition." ***Id.*** at 104, 97 S.Ct. at 290-91. Such "deliberate indifference" can be evidenced by a prison official's intentional denial or delay in providing medical treatment. ***Id.*** Furthermore, both the federal and state governments have a constitutional obligation to provide "minimally adequate" medical care to those whom they incarcerate. ***Harris v. Thigpen,*** 941 F.2d 1495, 1505 (11th Cir. 1991) (citing ***Estelle,*** 429 U.S. at 104, 97 S.Ct. at 291). *See also*

***Wellman v. Faulkner,*** 715 F.2d 269, 271 (7th Cir. 1983); ***Morgan v. Sproat,*** 432 F. Supp. 1130, 1143 (S.D. Miss. 1977). Grossly inadequate medical care will suffice to prove an Eighth Amendment violation with regards to minimal medical care provided to inmates. ***Harris,*** 941 F.2d at 1505 (citing ***Rogers v. Evans,*** 792 F.2d 1052, 1058 (11th Cir. 1986)).

¶ 31. Here, Carter was not only wholly denied adequate and minimal medical care, but the prison guards and officials acted with deliberate indifference in failing to provide him medical care at all until it was too late. It is undisputed that the Central Mississippi Correctional Center did not provide medical care adequate to treat Carter's seizure condition. In fact, the evidence reflects that no medical staff was on hand the night of him [sic] death. To make matters even worse, before an ambulance was even called, Carter had suffered seven seizures, and the guard on duty had been informed of the seizures several times. Even after being informed that Carter had suffered seven seizures, the prison officials still chose to place him on a cot then transfer him to an empty CMCC clinic where no nurse or doctor was present or on call. It was only after Carter had repeatedly seized for over an hour that an ambulance was called for his transport. Under these facts, one can clearly see that not only did the CMCC fail to provide adequate medical personnel, but the prison officials also exhibited "deliberate indifference" for the serious medical condition for which Carter suffered. On this record summary judgment and/or dismissal was not appropriate as Carter's complaint clearly stated a claim for which relief may be granted and genuine issues of material fact exist with regard to the issues just discussed.

¶ 32. "[W]hen the State takes a person into its custody and holds him against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." ***DeShaney v. Winnebago County Dep't of Soc. Servs.***, 489 U.S. 189, 206, 109 S.Ct. 998, 1005, 103 L.Ed.2d 249 (1989) (citing ***Youngberg v. Romeo***, 457 U.S. 307, 317, 102 S.Ct. 2452, 2458, 73 L.Ed.2d 28 (1982)). Because this record does not establish that the State discharged its duty here, I would reverse the trial court's judgment and remand for further proceedings. For these reasons, I dissent.

**WALLER, J., JOINS THIS OPINION.**

**IN THE CIRCUIT COURT OF
RANKIN COUNTY, MISSISSIPPI**

**RURY CARTER, Individually and on Behalf of the wrongful death heirs, beneficiaries, and estate of STACIE CARTER, Deceased** — **PLAINTIFFS**

**VS.** — **CIVIL ACTION NO. 98-238**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS, AND FRED CHILDS, in his official capacity as Superintendent of Rankin County, Mississippi Correctional Facility** — **DEFENDANTS**

**OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND FINAL JUDGMENT OF DISMISSAL**

(Filed Oct. 3, 2002)

**THIS CAUSE** came on for hearing on defendants' motion for dismissal, or alternatively, for summary judgment. After the Court having reviewed the entire court file, including the memorandum submitted and the authorities cited therein, as well as, the pleadings and discovery deposition testimony, and after having heard argument of counsel and being otherwise fully advised in the premises, the Court finds as follows:

## I. FACTS

Plaintiff brought this action based upon a claim of wrongful death of her son, Stacie Carter ("Carter") on her behalf and on behalf of his brothers and sisters. In January 1995, Carter was sentenced by the Lincoln County Circuit Court to serve [sic] term of five (5) years in the

custody of the Mississippi Department of Corrections ("MDOC") for burglary and armed robbery. Carter died on January 15, 1997, at the Rankin County Medical Center in Brandon, Mississippi while in route to the University Medical Center in Jackson. At the time of his death, Carter was an inmate at the Central Mississippi Correctional Center ("CMCC") in Rankin County. Following his conviction, in August, 1995, Carter was transferred from the Lincoln County Jail and into the custody of MDOC and subsequently transported to CMCC. Soon thereafter, Carter was sent to Parchman for a short period of time. In the Fall of 1996, Carter was returned to CMCC where he was incarcerated at the time of his death in January 1997.

**Procedural History**

Plaintiff filed her complaint in the Circuit Court of Copiah County, and named as defendants, The Mississippi Tort Claims Board and the State of Mississippi. Those named defendants moved to dismiss the complaint for lack of proper venue. The dismissal was denied as to the "Mississippi Department of Transportation," and the case was transferred to the Circuit Court of Rankin County. Upon plaintiff's motion, the misstatement regarding the "Mississippi Department of Transportation" was corrected to reflect denial of defendant Mississippi Tort Claims Board's motion to dismiss.

Plaintiff thereafter was granted leave to amend the complaint to name as defendants, the Mississippi Department of Corrections and Fred Childs, in his official capacity as Superintendent of the Mississippi Correctional Facility, Rankin County. Plaintiff was allowed to amend the complaint a second time and added causes of action

alleged to be based on certain authorities, which are listed below.

1. 8th Amendment to the U.S. Constitution;
2. 14th Amendment to the U.S. Constitution (due process and equal protection clauses);
3. 42 U.S.C. §1983;
4. Art. 3, § 28, Miss. Constitution (1890);
5. Art. 3, §14, Miss. Constitution (1890); and
6. Art. 3, § 24, Miss. Constitution (1890).

## II. STANDARD OF REVIEW

Summary judgment is appropriate if the evidence before the Court, i.e., pleadings, depositions, answers to interrogatories, admissions and affidavits, all of which must be viewed in a light most favorable to the non-moving party, shows there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Jenkins v. Ohio Casualty Insurance Co.,* 794 So. 2d 228 (Miss. 2001).

## III. ARGUMENT

### MDOC immunity under Miss. Code Ann. § 11-46-9

Plaintiff alleges that her claims are viable because of the below listed actions of defendants.

1. refusing to carry Carter from the place he had his seizure to the clinic;

2. failing to have the equipment, physician or medical staff on duty at the Rankin County, Mississippi Correctional Facility ("Facility") to treat Carter;

3. failing to have trained medical staff on duty and an ambulance at the Facility to treat Carter and transfer him to a medical facility where he could be treated;

4. failing to have a physician, medical staff, medical equipment, or an ambulance at the Facility at the time Carter had his seizure; and

5. having a policy at the Facility of not having trained medical staff on duty and an ambulance at the Facility to treat inmates and transfer them to a medical facility where they could be treated, and misappropriating funds to be used for such purposes.

The Mississippi Legislature officially ended full sovereign governmental immunity in 1983 with the passage of the Mississippi Governmental Immunity Act ("Tort Claims Act"). The Legislature however provided certain specific exceptions to its waiver of immunity. Those specific qualified immunities afford protection to state and political subdivisions from liability whenever a claim has arisen out of certain enumerated actions or inactions by the state or its employees, and are found in Miss. Code Ann. § 11-46-9, which provides, in part:

> (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim: . . .
>
> (m) Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other

> such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed; . . .
>
> (r) Arising out of the lack of adequate personnel or facilities at a state hospital or state corrections facility if reasonable use of available appropriations has been made to provide such personnel or facilities;. . . .

Since the Legislature's passage of the Tort Claims Act, Mississippi law is clear concerning the issue of an inmate's standing to bring a claim against a governmental entity and its employees acting within the course or scope of their employment or duties. Those entities simply are not liable.

Among the cases decided by the Mississippi Supreme Court that have addressed § 11-46-9(l)(m) is *Sparks v. Kim,* 701 So.2d 1113 (Miss. 1997). Although the Supreme Court in *Sparks* refused to retroactively enforce the statute, a well-reasoned standard contained in the opinion is that § 11-46-9(l)(m) "effectively cuts off" an inmate's right to bring an action against either the state or its officials. See *Sparks* at 1114, as quoted in *Wallace v. City of Raleigh, Mississippi* 2001-CA-00455-SCT.

As used within the chapter concerning immunity of state and political subdivisions from liability for torts, § 11-46-1 provides the term "governmental entity" means and includes the state and political subdivisions as therein defined. Additionally, the Legislature defined the term, "employee" to mean any officer, employee or servant of the State of Mississippi or a political subdivision of the state including elected or appointed officials and persons acting

on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation. . . . Therefore, defendant Mississippi Department of Corrections, as well as, defendant Fred Childs, in his official capacity, are properly classified as "government entity" and "employee" respectively, as provided by the above definitions, and, as such, are immune from all liability for the claims asserted by plaintiff in this action by virtue of Miss. Code Ann. § 11-46-9(l)(m).

Plaintiff also alleges defendants "implemented and carried out a policy at [CMCC] of misappropriating funds for medical staff, equipment and an ambulance, and not having trained medical staff on duty and an ambulance at the facility to treat inmates and transfer the [sic] to a medical facility where they could be treated." Following the statement about appropriation of funds, plaintiff set forth on page six (6) of her amended response to defendant's motion a factual scenario regarding the events of Carter's death. It is generally as follows. Carter had experienced three (3) seizures by 4:00 p.m. when a fellow inmate went to one of the guard towers to report that Carter had suffered his third seizure. The officer in the tower called the medical unit. That same inmate went to the tower a second time and reported that Carter was continuing to have seizures, and the officer called the medical unit a second time. No one from the medical unit ever came since there was no ambulance. Carter continued to have seizures, and had seven (7) by the time a non-medical officer arrived. Thereafter, two inmates took Carter to the clinic, but there was no one there. At approximately 5:05 p.m. the third watch commander was directed by the institution watch commander to transfer

Carter to the University Medical Center. At approximately 5:20 p.m. an ambulance from the Rankin County Medical Center ("Center") arrived to transport Carter, and it left sometime around 6:08 p.m. Carter experienced complications sufficient enough to be taken to the Center where he died at 6:37 p.m. Assuming that § 11-46-9(l)(m) may not [sic] controlling, and an inmate is allowed to assert a claim under the conditions contained in § 11-46-9(l)(r), as tragic as the circumstances surrounding Carter's death are when taken as true, plaintiff has failed to make a showing there was not reasonable use of available appropriations to provide personnel or facilities for medical staff, services and equipment. Accordingly, this cause cannot be maintained under Miss. Code Ann. § 11-46-9(l)(r) either.

**Constitutional claims**

Plaintiff claims defendants violated Carter's constitutional rights through their deliberate, intentional, malicious and reckless disregard for his rights, and by having an arbitrary and capricious policy of not providing physicians, medical staff, medical treatment, medical facilities and ambulances to inmates.

After the plaintiff in *Wallace* argued a violation of the Remedy, Due Process and Equal Protection Clauses of the Mississippi and United States Constitutions, the Mississippi Supreme Court recognized in *Wallace* that in *Robinson v. Stewart,* 655 So.2d 866 (Miss. 1995) it had held the remedy clause, Miss. Const. art. 3, § 24, does not conflict with sovereign immunity, does not require exceptions to sovereign immunity and does not grant an absolute guarantee of a trial. *Wallace* at ¶ 10 (citing *Robinson* at 868-869 citing *Grimes v. Pearl River Valley Water Supply*

*Dist.,* 930 F. 2d 441 (5th Cir.)). The Supreme Court has further stated that:

> [i]n *Robinson.* this Court also held sovereign immunity did not violate due process. 655 So. 2d at 869. "A due process violation requires the infringement of a liberty or property right." *Id.* at 869 (citing *Tucker v. Hinds County,* 558 So.2d 869, 873 (Miss. 1990)). Because the right to sue the State has been withheld through the statutes by the Legislature, there is no property right to sue the State or other governmental entities and, therefore, no due process violation of the Mississippi Constitution. *Robinson,* 655 So.2d at 869. The same analysis applies to the United States Constitution because state law defines property interests, and the Mississippi Legislature has continuously denied any exceptions to overcome sovereign immunity. *Grimes,* 930 F.2d at 444.

*Wallace* at ¶11.

The Supreme Court continued to state that:

> [i]f the statute is found to be rationally related to a legitimate purpose, "equal protection is not violated by conferring benefits on some and not all of the people of the state." *Mosby v. Moore,* 716 So.2d 551, 556 (Miss. 1998). The Legislature had a legitimate purpose in protecting governmental entities from claims brought by inmates, thus there is no equal protection violation in denying prison inmates certain rights granted to law-abiding citizens. The court in *Grimes* also held the sovereign immunity statute did not violate the Equal Protection Clause of the Fourteenth

> Amendment to the United States Constitution. 930 F.2d at 444.

*Wallace* at ¶12.

The United States Court of Appeals for the Fifth Circuit has declared:

> (1) that the state owes the same duty under the Due Process Clause and the Eighth Amendment to provide both pretrial detainees and convicted inmates with basic human needs, including medical care and protection from harm, during their confinement; and (2) a state jail official's liability for episodic acts or omissions cannot attach unless the official had subjective knowledge of a substantial risk of serious harm to a pretrial detainee, but responded with deliberate indifference to that risk.

*Hare v. City Corinth,* 135 F. 3d 320 (5th Cir. 1998) quoting *Hare v. City of Corinth,* 74 F.3d 633 (5th Cir. 1996).

The standard the Court has applied in reviewing the alleged Eighth Amendment rights violations, specifically involving denial or interference with the medical needs of Carter, is the above "deliberate indifference" standard. In all of the testimony of plaintiff and her children, the known wrongful death beneficiaries of Carter, and the testimony of MDOC personnel, the Court does not find any evidence of "deliberate indifference" on the part of defendants in respect to their treatment of Carter. Pursuant to *Hare,* plaintiff has the burden of showing that the MDOC acted or failed to act with "deliberate indifference" to the "basic human needs" of Carter. Plaintiff has failed to make such a showing.

**Punitive damages prohibited by *Miss. Code Ann. § 11-46-15(2)***

Based on the Court's above-stated review, the death of Carter was both unforeseeable and unpreventable under the circumstances. Plaintiff is not allowed to seek or receive punitive damages in this case as punitive damages are specifically disallowed by the Tort Claims Act. Miss. Code Ann. § 11-46-15 provides as follows:

> (2) No judgment against a governmental entity or its employee for any act or omission for which immunity is waived under this chapter shall include an award for exemplary or punitive damages or for interest prior to judgment, or an award of attorney's fees unless attorney's fees are specifically authorized by law.

Accordingly, plaintiff's claims for punitive damages should be stricken as plaintiff is not allowed to recover punitive damages in the type of action being alleged against defendants.

## IV. CONCLUSION

After the Court having reviewed the entire court file, including the memorandum submitted and the authorities cited therein, as well as, the pleadings and discovery deposition testimony, and after having heard argument of counsel and being otherwise fully advised in the premises, the Court finds plaintiff has failed to reveal any facts, either through discovery or the plain language of the pleadings, which would support the claims against defendants. The Court further finds there exists no genuine issue of material fact and, for the above and foregoing reasons, defendants are entitled to a summary judgment

as a matter of law as to all plaintiff's claims, including those for punitive damages

**IT IS THEREFORE ORDERED AND ADJUDGED** that defendant's Motion to Dismiss, or alternatively, for Summary Judgment shall be and hereby is granted, and the second amended complaint shall be and hereby is dismissed with prejudice. Finding no reason for delay, the Court pursuant to M.R.C.P. 54(b), certifies this Judgment as final as to defendants, the Mississippi Department of Corrections and Fred Childs in his official capacity as Superintendent of the Rankin County Mississippi Correctional Facility, and further orders the parties to bear their own respective costs and expenses.

**SO ORDERED AND ADJUDGED** this 3rd day of October 2002.

/s/ William E. Chapman III
**CIRCUIT JUDGE**

STATE OF MISSISSIPPI
COUNTY OF RANKIN

A TRUE AND CORRECT COPY,
I HEREBY CERTIFY
LANELL IVEY, CIRCUIT CLERK

BY: /s/ Irene Luckey, D.C.

**IN THE CIRCUIT COURT OF
RANKIN COUNTY, MISSISSIPPI**

**RUBY CARTER, Individually,
and on Behalf of the Estate of
STACIE CARTER, Deceased** **PLAINTIFFS**

**VS.** **CIVIL ACTION NO. 98-238**

**MISSISSIPPI DEPT. OF
CORRECTIONS, ET AL.** **DEFENDANTS**

**ORDER ALLOWING MOTION
TO AMEND COMPLAINT**

(Filed Jan. 28, 2002)

The above cause came on to be heard upon the Plaintiffs' motion for leave to file a Second Amended Complaint in this cause, and the Court, being fully advised in the premises, finds that said motion is well taken and should be granted.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Plaintiffs are hereby granted leave to file a Second Amended Complaint in this cause and shall serve a copy of the Second Amended Complaint upon counsel for the Defendants within ten (10) days of the date of this Order. Plaintiff is not required to serve process pursuant to Rule 4 of the Mississippi Rules of Civil Procedure.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendants shall have thirty (30) days from and after service of the Second Amended Complaint upon said counsel to file an Answer or other responsive pleading.

SO ORDERED AND ADJUDGED, this the 28th day of January, 2002.

/s/ William E. Chapman III
CIRCUIT JUDGE

APPROVED AS TO FORM:

/s/ Nathaniel Armistad
NATHANIEL A. ARMISTAD
– MSB 10053
Attorney for Plaintiffs

/s/ James D. Holland
JAMES D. HOLLAND
Attorney for Defendants

**STATE OF MISSISSIPPI**
**COUNTY OF RANKIN**

**A TRUE AND CORRECT COPY, I HEREBY CERTIFY**
**LANELL IVEY, CIRCUIT CLERK**

**BY:** /s/ Irene Luckey, D.C.

## AMENDMENT 8

**Bail-Punishment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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## AMENDMENT 11

**Suits against states-Restriction of judicial power.**

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

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## AMENDMENT 14

**Section 1. Citizens of the United States.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

**Section 5. Power to enforce amendment.**

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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**42 U. S. C. § 1983. Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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**Miss. Code Ann. § 11-46-7(1) & (2) (Rev. 2002).**

(1) The remedy provided by this chapter against a governmental entity or its employee is exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity or its employee or the estate of the employee for the act or omission which gave rise to the claim or suit; and any

claim made or suit filed against a governmental entity or its employee to recover damages for any injury for which immunity has been waived under this chapter shall be brought only under the provisions of this chapter, notwithstanding the provisions of any other law to the contrary.

**(2)** An employee may be joined in an action against a governmental entity in a representative capacity of the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties. For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense.

* * *

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**Miss. Code Ann. § 11-46-9(1)(m) (Rev. 2002).**

**(1)** A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

* * *

**(m)** Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary, or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm,

penitentiary or other such institution when the claim is filed;

* * *

---

**Miss. Code Ann. § 11-46-15(2) (Rev. 2002).**

(2) No judgment against a governmental entity or its employee for any act or omission for which immunity is waived under this chapter shall include an award for exemplary or punitive damages or for interest prior to judgment, or an award of attorney's fees unless attorney's fees are specifically authorized by law.

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**IN THE CIRCUIT COURT OF**
**RANKIN COUNTY, MISSISSIPPI**

**RUBY CARTER, Individually, and on Behalf of the wrongful death heirs, beneficiaries, and estate of STACIE CARTER, Deceased** — **PLAINTIFFS**

**VS.** — **CIVIL ACTION NO. 98-238**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS, AND FRED CHILDS, in his official capacity as Superintendent of the Rankin County, Mississippi Correctional Facility** — **DEFENDANTS**

## SECOND AMENDED COMPLAINT

(Filed Jan. 30, 2002)

COMES NOW Plaintiff, RUBY CARTER, Individually, and on behalf of the wrongful death heirs, beneficiaries, and estate of Stacie Carter, Deceased, and makes and files this her Second Amended Complaint against the Defendants, the State of Mississippi, the Mississippi Department of Corrections and Fred Childs, in his official capacity as Superintendent of the Rankin County, Mississippi Correctional Facility. For said cause, the plaintiff would show unto the Court the following, to-wit:

## PARTIES

1. Plaintiff, Ruby Carter, is an adult resident citizen of Copiah County, Mississippi, whose address is 2559 Timberlane Road, N. E., Wesson, Mississippi 39191.

2. Defendant, the Mississippi Department of Corrections, is a governmental entitity [sic] of the State of Mississippi, which may be served with the process of this Court by serving the Attorney General for the State of Mississippi, Honorable Mike Moore, at the Office of the Attorney General for the State of Mississippi, Post Office Box 220, Carroll Gartin Justice Building, Jackson, Mississippi 39205. Since this Defendant is already a party, it may be served with process by serving its attorney James Holland, Esquire.

3. Defendant, Fred Childs, is sued in his individual and official capacity as the Superintendent of the Rankin County, Mississippi Correctional Facility. Defendant, Fred Childs, is an adult resident citizen of Rankin County, Mississippi, who may be served with the process of this Court at The Central Mississippi Correctional Facility, 3794 Highway 468, Pearl, Mississippi 39208. Since this Defendant is already a party, he may be served with process by serving his attorney James Holland, Esquire.

## FACTS

4. Plaintiff's decedent, Stacie Carter, was an inmate incarcerated at the Rankin County, Mississippi Correctional Facility on January 15, 1997 when he died due to the reckless disregard for the rights of the plaintiff's decedent, and due to the deliberate indifference to the serious medical needs of the plaintiff's decedent, Stacie Carter.

5. Plaintiff's decedent, Stacie Carter, was serving a sentence of Five (5) years on two (2) counts of burglary from the Circuit Court of Lincoln County, Mississisppi [sic]

at the Rankin County, Mississippi Correctional Facility on Janaury [sic] 15, 1997.

6. Stacie Carter, Deceased, was survived by his mother, brothers, and sisters.

7. Plaintiff's decedent, Stacie Carter, had a history of seizures and medical problems before and during his incarceration.

8. Plaintiff's decedent's, Stacie Carter's, medical problems required that he be incarcerated at the medical facility at Parchman, Mississippi.

9. The defendants knew or should have known that Plaintiff's decedent's medical problems required him to be incarcerated at the medical facility at Parchman, Mississippi.

10. On January 15, 1997, Plaintiff's decedent suffered a seizure while incarcerated at the Rankin County, Mississippi Correctional Facility and it took more than one hour to get him to a clinic.

11. Employees and prison officials at the Rankin County, Mississippi Correctional Facility refused to carry Plaintiff's decedent from the place he had his seizure to the clinic.

12. The clinic at the Rankin County, Mississippi Correctional Facility did not have the equipment, physician, or medical staff on duty to treat plaintiff's decedent.

13. The Rankin County, Mississippi Correctional Facility was supposed to have trained medical staff on duty and an ambulance at the facility to treat plaintiff's

decedent and transfer him to a medical facility where he could be treated.

14. Plaintiff's decedent went into cardiac arrest while unattended at the Rankin County, Mississippi Correctional Facility on January 15, 1997.

15. There was no physician, medical staff, medical equipment, or ambulance at the Rankin County, Mississippi Correctional Facility on January 15, 1997 when Plaintiff's decedent had his seizure.

16. Defendant, Fred Childs, implemented and carried out a policy at the Rankin County, Mississippi Correctional Facility prior to and on January 15, 1997 of not having trained medical staff on duty and an ambulance at the facility to treat inmates and transfer them to a medical facility where they could be treated.

17. Defendants implemented and carried out a policy at the Rankin County, Mississippi Correctional Facility prior to and on January 15, 1997 of misappropriating funds for medical staff, equipment, and an ambulance, and in not having trained medical staff on duty and an ambulance at the facility to treat inmates and transfer them to a medical facility where they could be treated.

18. The actions and inactions of the Defendants, as mentioned above were deliberate, intentional, malicious, and in reckless disregard for the rights of inmates, including Plaintiff's decedent.

19. The policy of the Defendants in not providing physicians, medical staff, medical treatment, medical facilities, and ambulances to inmates was arbitrary and capricious.

20. The Mississippi Tort Claims Act, § 11-46-9(m) does not provide due process of law for Plaintiff and her decedent.

## CAUSES OF ACTION

### COUNT I – MISSISSIPPI TORT CLAIMS ACT

21. The actions and inactions of the Defendants, as mentioned above, constituted reckless disregard for the rights of Plaintiff and her decedent and a tort under Mississippi law.

### COUNT II – 8TH AMENDMENT

22. The actions and inactions of the Defendants, as mentioned above, violated rights secured to Plaintiff and her decedent by the 8th and 14th Amendments to the United States Constitution and 42 U.S.C. § 1983.

### COUNT III – ART. 3, § 28, MISS. CONST. (1890)

23. The actions and inactions of the Defendants, as mentioned above, violated rights secured to Plaintiff and her decedent by Art. 3, §28, Miss. Const. (1890).

### COUNT IV – 14th AMENDMENT (DUE PROCESS)

24. The actions and inactions of the Defendants, as mentioned above, violated rights secured to Plaintiff and her decedent by the 14th Amendment Due Process Clause (procedural and substantive due process) of the United States Constitution and 42 U.S.C. § 1983.

**COUNT V – ART. 3, § 14, MISS. CONST. (1890)**

25. The actions and inactions of the Defendants, as mentioned above, violated due process rights secured to Plaintiff and her decedent by Art. 3, § 14, Miss. Const. (1890).

**COUNT VI – ART. 3, § 24, MISS. CONST. (1890)**

26. The actions and inactions of the Defendants, as mentioned above, violated due process rights secured to Plaintiff and her decedent by Art. 3, §24, Miss. Const. (1890).

**COUNT VII – 14th AMENDMENT (EQUAL PROTECTION)**

27. The actions and inactions of the Defendants, as mentioned above, violated rights secured to Plaintiff and her decedent by the 14th Amendment Equal Protection Clause of the United States Constitution and 42 U.S.C. § 1983.

**COUNT VIII – 14th AMENDMENT (DUE PROCESS)**

28. The Mississipi [sic] Tort Claims Act, § 1-46-9(m), Miss. Code Ann. (2001), vi, as mentioned above, violate rights secured to Plaintiff and her decedent by the 14th Amendment Due Process Clause (procedural and substantive due process) of the United States Constitution and 42 U.S.C. § 1983.

**CAUSATION AND DAMAGES**

29. As a proximate results [sic] of the actions and inactions of the Defendants, Plaintiff's decedent died and Plaintiff suffered a loss of society and companionship, love, and affection, net cash value of life, and incurred funeral bills.

**WHEREFORE**, Plaintiff demands judgment of and from the Defendants in the amount of $500,000.00.

This the ~~10th~~ 29th day of January, 2002.

Respectfully submitted,
**RUBY CARTER, Individually, and on Behalf of the Estate of STACIE CARTER, Deceased, PLAINTIFFS**

BY: /s/ Carroll Rhodes

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**IN THE CIRCUIT COURT OF
RANKIN COUNTY, MISSISSIPPI**

| | |
|---|---|
| **RUBY CARTER, Individually, and on Behalf of the Wrongful Death Heirs, Beneficiaries, and Estate of STACIE CARTER, DECEASED** | **PLAINTIFF** |
| **VS.** | **CIVIL ACTION NO. 98-238** |
| **MISSISSIPPI DEPARTMENT OF CORRECTIONS, AND FRED CHILDS, in His Official Capacity as Superintendent of the Rankin County, Mississippi Correctional Facility** | **DEFENDANTS** |

**PLAINTIFF'S RESPONSE TO THE DEFENDANTS MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

(Filed Jun. 27, 2002)

COMES NOW Ruby Carter, Individually, and on Behalf of the Wrongful Death Heirs, Beneficiaries, and Estate of Stacie Carter, Deceased, and, pursuant to *M. R. C. P. 12 & 56*, file this response to the defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. The Motion to Dismiss should be denied because the plaintiff has alleged sufficient facts to state viable claims against the defendants. The Motion for Summary Judgment should be denied because genuine issues of material fact exist precluding summary judgment and the defendants are not entitled to judgment as a matter of law. This Response to the Motion to Dismiss, or

in the Alternative, Motion for Summary Judgment, will state the standard for considering a motion to dismiss, the standard for considering summary judgment, the facts of the case, the law pertaining to plaintiffs federal and state claims, the law pertaining to the defendants' defenses, and a conclusion.

## I. THE STANDARD FOR CONSIDERING A MOTION TO DISMISS

When considering a motion to dismiss under *MR.C.P. 12*, the Court normally looks to the pleadings – the complaint and answer. A motion to dismiss under *MR.CP. 12* "should not be granted unless it appears beyond doubt that the plaintiff will be unable to prove any set of facts in support of [her] claim." *Brewer v. Burdette*, 768 So. 2d 920, 922 (Miss. 2000) (en banc). If the Court finds it necessary to resort to matters outside the pleadings, then the motion to dismiss is converted to a summary judgment motion. *Walton v. Bourgeois*, 512 So. 2d 698, 700 (Miss. 1987). It is necessary for the Court to resort to matters outside the pleadings in the present case. Therefore, the Court should not consider the defendants' motion to dismiss, but should convert that motion to one for summary judgment.

## II. THE STANDARD FOR CONSIDERING A MOTION FOR SUMMARY JUDGMENT

The party moving for summary judgment "has the burden of demonstrating that there is no genuine issue of material fact in existence . . . " *Jenkins v. Ohio Casualty Insurance Co.*, 794 So. 2d 228, 232 (Miss. 2001) (en banc). A question of material fact exists "where one party swears to one version of the matter in issue and another says the

opposite." *Jenkins v. Ohio Casualty Insurance* Co., supra, at 232. In deciding whether a genuine issue of material fact exists, the Court reviews the record evidence including the pleadings, depositions, answers to interrogatories, admissions, and affidavits in the light most favorable to the party opposing the motion, *Doe v. Stegall*, 757 So. 2d 201, 204 (Miss. 2000), drawing all reasonable inferences in that party's favor. *Gant v. Maness*, 786 So. 2d 401, 403 (Miss. 2001) (en banc). If the Court views the record evidence in this case in the light most favorable to the plaintiff, the nonmoving party, then it will be clear that a genuine issue of material fact exists precluding summary judgment. The Supreme Court "has held that a trial court should err on the side of denying motions for summary judgment." *Doe v. Stegall*, supra, at 204.

## III. THE FACTS OF THIS CASE

Stacie Carter, a black male,[1] was born December 6, 1974,[2] and he lived with his mother, Ruby Carter, in Wesson, Mississippi until he was arrested and incarcerated at the Lincoln County, Mississippi jail.[3] He was charged with two (2) counts of grand larceny.[4] Stacie was ultimately convicted on the two grand larceny counts and sentenced on January 30, 1995 to serve two concurrent

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[1] App. 3 and 119-120, Dep. of James Lyle (p. 10) and MDOC Disposition Sheets.

[2] App. 64 and 113, Dep. of Ruby Carter (p. 13) and Rankin General medical records.

[3] App. 61-67 and 119-129, Dep. of Ruby Carter (pp. 3-28) and MDOC Disposition Sheets.

[4] App. 119-120, MDOC Criminal Disposition Sheets.

terms of five (5) years in the custody of the Mississippi Department of Corrections (MDOC).[5] Stacie served his sentence at the Lincoln County jail, the state penitentiary at Parchman, Mississippi, and the Correctional Facility in Rankin County.[6]

Stacie had medical problems that predated his incarceration. His head began to hurt him while he was in high school. Mrs. Ruby Carter, his mother, took him to Dr. Blanchard in Hattiesburg who diagnosed him with a brain abscess.[7] Dr. Parent performed surgery and removed two abscesses. Stacie spent 34 days recovering in the hospital. Prior to this surgery to remove the abscesses, Stacie had not had any seizures.[8]

Stacie worked during the Summer recess at the Timberlane Campgrounds. During the Summer of 1992, Stacie went to work and had his first seizure.[9] He was taken to the hospital in Hazlehurst, treated, and released.[10] He suffered another seizure a few months later.[11] Stacie was prescribed Dilantin for his seizures in 1993.[12] He took his medication while he was incarcerated.[13]

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[5] App. 117-120, Sentencing Orders and MDOC Disposition Sheets.

[6] App. 67, Dep. of Ruby Carter (pp. 26-27).

[7] App. 64, Dep. of Ruby Carter (p. 16).

[8] App. 64-65, Dep. of Ruby Carter (pp. 16-19).

[9] App. 64-65, Dep. of Ruby Carter (pp. 16-20).

[10] App. 65, Dep. of Ruby Carter (p. 20).

[11] App. 65-66, Dep. of Ruby Carter (p. 20-21).

[12] App. 66, Dep. of Ruby Carter (pp. 21-23).

[13] App. 45, Dep. of Valentino Lewis (p. 9).

Stacie did not have any seizures while he was incarcerated at the Lincoln County jail or while he as [sic] processed through the Rankin County Correctional facility en route to the prison at Parcham, Mississippi.[14] He did, however, have several seizures while he was at the state prison facility at Parchman.[15]

Stacie and some other prisoners were transferred from the prison facility at Parchman to the Rankin County Correctional facility (RCC) in the Fall of 1996.[16] Stacie was housed at 720, B-2, C-zone.[17] The RCC was a new state correctional facility.[18] Unit 720, B-2, C-zone was a disability camp,[19] but it was not complete when Stacie and the other inmates arrived.[20] The C-zone ward where Stacie and other prisoners were placed was for inmates with medical problems.[21] There was no heat, no hot water, no tables, or TVs on this ward until just before Christmas in December, 1996.[22] More importantly, there was no ambulance[23] and only two doctors on call a couple days a week

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[14] App. 69, Dep. of Ruby Carter (p. 34).

[15] App. 69, Dep. of Ruby Carter (p. 34-36).

[16] App. 41 and 3-5, Dep. of Valentino Lewis (p. 5) and Dep. of James Lyle (pp. 10-20).

[17] App. 3 and 41, Dep. of James Lyle (p. 10) and Dep. of Valentino Lewis (p. 5).

[18] App. 49, Dep. of Valentino Lewis (p. 13).

[19] App. 49-50, Dep. of Valentino Lewis (pp. 13-14).

[20] App. 3, Dep. of James Lyle (pp. 11-12).

[21] App. 53, Dep. of Valentino Lewis (p. 17).

[22] App. 3-4, Dep. of James Lyle (pp. 11-16).

[23] App. 3, Dep. of James Lyle (pp. 11-12).

for the inmates on this ward.[24] "There was nobody trained in the towers to notice or be able to give even CPR to inmates if they were having problems."[25] The medication for the prisoners on this ward was kept by the guards in the picket (tower).[26] Stacie and the other prisoners would have to go to the tower and get the guard on duty to give them their medication.[27]

Stacie had a history of seizures while he was at 720, B-2, C-zone.[28] He had suffered a couple of mild seizures prior to January 15, 1997.[29] Stacie's medication, Dilantin, was kept in the tower for him.[30]

The RCC C-zone opened on October 5, 1996.[31] The facility was supposed to have had an ambulance,[32] but the facility did not have one.[33] Funds had been appropriated by the Mississippi Legislature and spent by MDOC officials by September, 1996 for an ambulance, medical equipment, training, and doctors,[34] but none of that had been done by the time Stacie died.[35]

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[24] App. 3, Dep. of James Lyle (pp. 11-12).

[25] App. 3, Dep. of James Lyle (p. 11-12).

[26] App. 53-54, Dep. of Valentino Lewis (pp. 17-18).

[27] App. 53-58, Dep. of Valentino Lewis (pp. 17-22).

[28] App. 3, Dep. of James Lyle (p. 10-11).

[29] App. 3, Dep. of James Lyle (p. 10-11).

[30] App. 44-45, 53-54, Dep. of Valentino Lewis (pp. 8-9, 17-18).

[31] App. 4, Dep. of James Lyle (p. 14).

[32] App. 4, Dep. of James Lyle (p. 15).

[33] App. 49, Dep. of Valentino Lewis (p. 13).

[34] App. 5, Dep. of James Lyle (pp. 17-19).

[35] App. 49, Dep. of Valentino Lewis (p. 13).

Stacie had a seizure while he was in 720, B-2, C-zone with other inmates[36] on January 15, 1997 just before supper[37] at about 4:00 p.m.[38] It was cold and sleeting that day.[39] Valentino Lewis, an inmate on the same zone with Stacie, went to the tower after Stacie had suffered his third seizure and reported the incident to Catherine Burgess (Jenkins).[40] She was in the tower by herself.[41] Officer Burgess called the medical unit, and Valentino went back to the zone to sit with Stacie until the medical unit arrived.[42] MDOC had a policy in effect at the time that the medical unit would not be called until after an inmate had a third seizure.[43]

Stacie kept having seizures, so Valentino went back to the tower and told Officer Burgess (Jenkins) that he was continuing to have seizures.[44] Officer Burgess called again, but no one from the medical unit came because the facility did not have an ambulance.[45] Only an S and E officer arrived with an Army cot.[46] At least 20 and possibly 30 minutes passed between the time Valentino told Officer

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[36] App. 41-42, Dep. of Valentino Lewis (pp. 5-6).

[37] App. 113-116, Stacie's medical records from Rankin County Medical Center.

[38] App. 35, Incident Report.

[39] App. 47, Dep. of Valentino Lewis (p. 11).

[40] App. 41-45, Dep. of Valentino Lewis (pp. 5-9).

[41] App. 49, Dep. of Valentino Lewis (p. 13).

[42] App. 41-45, Dep. of Valentino Lewis (pp. 5-9).

[43] App. 44, Dep. of Valentino Lewis (p. 8).

[44] App. 46, Dep. of Valentino Lewis (p. 10).

[45] App. 46, Dep. of Valentino Lewis (p. 10).

[46] App. 46-47, Dep. of Valentino Lewis (pp. 10-11).

Burgess that Stacie had had his third seizure and by the time the S and E officer arrived.[47] Stacie had had seven seizures before the S and E officer arrived.[48] No one from the medical unit arrived – only an officer.[49]

Since no one from the medical unit arrived, two inmates placed Stacie on the Army cot and took him to the clinic.[50] "[T]here was no one in the clinic . . . "[51] At approximately 5:05 p.m., Lt. Kevin Jackson, the third watch commander was informed by Capt. Patrick Marion, the institutional watch commander, that Stacie needed to be transferred from the clinic to UMC.[52] At approximately 5:20 p.m., the ambulance from Rankin General Hospital arrived to take Stacie to UMC.[53] Twenty minutes later, at approximately 5:40 p.m., the ambulance left with Stacie in route to UMC.[54] Stacie experienced medical complications, and he was taken to Rankin General Hospital.[55] Stacie died at Rankin General at 6:37 p.m.[56]

Stacie was not the first RCC inmate to die because of a lack of proper medical attention. Between October, 1996 when the RCC facility first opened and January 15, 1997,

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[47] App. 51-52, Dep. of Valentino Lewis (pp. 15-16).

[48] App. 46, Dep. of Valentino Lewis (p. 10).

[49] App. 52, Dep. of Valentino Lewis (p. 16).

[50] App. 47, Dep. of Valentino Lewis (p. 11).

[51] App. 49, Dep. of Valentino Lewis (p. 13).

[52] App. 35, Incident Report.

[53] App. 35, Incident Report.

[54] App. 35, Incident Report.

[55] App. 35, Incident Report.

[56] App. 35, Incident Report.

a total of seven (7) inmates died.[57] Five (5) or six (6) of the inmates who died during this period were African-American. At the time Stacie died in January, 1997, there were approximately 600 inmates at the RCC.[58] Of those 600 inmates, 60-65%, or 360-390, were African-American.[59] All of the inmates in the 720 unit where Stacie were [sic] had medical needs.[60] That is the reason they were there. They were in medical class 3, 4, and 5.[61] The guys in unit 720 were in a "death camp."[62] Whenever "you have this many guys dying because you don't have the equipment and you don't have doctors, you don't have an ambulance there that could transport them to where there were doctors, then, . . . why have it as a medical facility?"[63]

Fred Childs, the Superintendent of the RCC, implemented and carried out a policy prior to and on January 15, 1997 of not having trained medical staff on duty or an ambulance at the facility to immediately transfer inmates with serious medical needs to a hospital.[64] He intentionally, or with reckless disregard for the life, health, and safety of Stacie Carter, tacitly approved and implemented a policy whereby RCC employees and staff would not

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[57] App. 10, Dep. of James Lyle (pp. 37-38).

[58] App. 9, Dep. of James Lyle (pp. 35-36).

[59] App. 9, Dep. of James Lyle (pp. 35-36).

[60] App. 9, Dep. of James Lyle (pp. 35-36).

[61] App. 9, Dep. of James Lyle (pp. 35-36).

[62] App. 11 and 25, Dep. of James Lyle (p. 41 and Ex. 3 to his Deposition).

[63] App. 11, Dep. of James Lyle (p. 41).

[64] App. 3-15, Dep. of James Lyle (pp. 10-60), and Second Amended Complaint, para. 16.

monitor Stacie's medication needs and administer medication to him or otherwise respond to his emergency medical needs in a timely manner.[65]

Plaintiff, Ruby Carter, brings the instant action individually and on behalf of all the wrongful death heirs and beneficiaries of Stacie Carter, Deceased, as well as his estate. At the time Stacie died, he was 22 years of age.[66] He did not have any children at the time of his death.[67] His sole and only heirs surviving him were his mother, Ruby Carter, and his sisters and brothers, Carl Carter, Alma Y. Carter, Cheryl Denise Carter, Andrea La'Shawn Carter, and his father, Lavell Gray, who died in the Spring of 1999. The plaintiffs seek wrongful death damages from the defendants[68] for loss of society and companionship, love and affection, net cash value of the decedent's life, and funeral bills for the violations of their and their decedent's constitutional rights – both federal and state.[69] The

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[65] App. 108, Answer to Interrogatory No. 13.

[66] App. 113, Rankin Hospital records.

[67] App. 72, Dep. of Ruby Carter (p. 48).

[68] A wrongful death action is a separate and distinct cause of action from personal injury actions and can be brought only by the survivors of the deceased. *Gentry v. Wallace*, 606 So. 2d 1117 (Miss. 1992). If wrongful death heirs, as set out in the Wrongful Death Statute, *§ 11-7-13, Miss. Code Ann. (Supp. 2001)*, survive the decedent, then the wrongful death action is not part of the decedent's estate. *Pannell v. Guess*, 671 So. 2d 1310 (Miss. 1996).

[69] Under Mississippi law, there can be only one wrongful death action and regardless of which proper heir brings suit first he or she does so for the benefit of all heirs entitled to recover as if they all had been named as plaintiffs. *Thames v. State of Mississippi for Use and Benefit of Shoemaker*, 117 F. 2d 949 (5th Cir. 1941), *cert. denied* 314 U.S. 630, 62 S. Ct. 63, 86 L. Ed. 506.

plaintiffs also seek damages under the Mississippi Tort Claims Act for the actions of the defendants which showed a reckless disregard for the rights of plaintiffs and their decedent. The federal claims plaintiffs seek recovery for are for violation of the fourteenth amendment's procedural and substantive due process clauses and the equal protection clause and the eighth amendment. Plaintiffs seek recovery for violation of their constitutional rights as well as violation of the rights of their decedent – Stacie.

## IV. THE LAW PERTAINING TO Plaintiff's CLAIMS

### a. The Law Pertaining to Plaintiff's Federal Claims

Plaintiff has asserted several federal claims against the defendants. Some of their claims are derivative from their decedent. That is, these claims are based on injuries they and their decedent suffered as a results of the defendants violating their decedent's constitutional rights. One derivative claim is that the defendants violated their decedent's 8th amendment constitutional rights by denying him adequate medical treatment. Another derivative claim is that the defendants violated their decedent's 14th amendment equal protection and due process rights by denying him adequate medical treatment and access to the courts. Another derivative claim is that the Mississippi Tort Claims Act's prohibition against inmates suing for damages they suffered as a results of prison officials intentional and deliberate indifference actions violated their decedent's 14th amendment procedural and substantive due process rights. The plaintiff has also asserted their individual and personal federal claims as well. One personal claim asserted by the plaintiffs is that the

defendants' denial of adequate medical treatment to their decedent was a cause of his death and violated the 8th amendment and 14th amendment of the federal Constitution. Still another personal claim asserted by the plaintiffs is that the Mississippi Tort Claims Act's prohibition against wrongful death claims of surviving heirs stemming from the death of an inmate at the "death camp" violate their 14th amendment procedural and substantive due process rights and their equal protection rights. The *Mississippi Tort Claims Act, § 11-1-46, et. seq., Miss. Code Ann. (Supp. 2001)*, does not bar plaintiffs claims that the defendants deprived their decedent of his constitutional rights which caused his death. See, *Rhyne v. Henderson County*, 973 F. 2d 386 (5th Cir. 1992); *Graham v. Sauk Prairie Police* Commission, 915 F. 2d 1085 (7th Cir. 1990); O'Connor [sic] *v. Several Unknown Correctional Officers*, 523 *F. Supp.* 1345 (E.D. Va. 1981); *Gonsalves v. City of New Bedford*, 939 F. Supp. 921 (D. Mass. 1996).

### 1. The 8th Amendment – Deliberate Indifference to Serious Medical Needs

State prisoners have a right not to be subjected to cruel and unusual punishment. The 8th amendment to the United States Constitution is the constitutional provision which grants convicted prisoners rights to be free from cruel and unusual punishment. *Hare v. City of Corinth, MS*, 74 F. 3d 633, 639 (5th Cir. 1996) (en banc). The deliberate indifference of prison officials to the serious medical needs of state inmates is cruel and unusual punishment. *Woodall v. Foti*, 648 F. 2d 268, 272 (5th Cir. 1981) (per curiam); *Thompkins v. Belt*, 828 F. 2d 298 (5th Cir. 1989). The United States "Supreme Court has held that 'deliberate indifference' to the serious medical needs

of prisoners amounts to the 'unnecessary and wanton infliction of pain' proscribed by the eighth amendment." *Redman v. County of San Diego*, 942 F. 2d 1435, 1441 (9th Cir. 1991), *quoting Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251 (1976) *(quoting Gregg v. Georgia*, 418 U.S. 153, 173, 96 S. Ct. 2909, 2925, 49 L. Ed. 2d 859 (1976). The Court must consider several factors in determining whether prison officials acted or failed to act with deliberate indifference of an inmate's serious medial needs. Those factors include "the seriousness of the prisoner's illness, the need for immediate treatment, the likely duration of his incarceration, the possibility of substantial harm caused by postponed treatment, the prospects of some cure or substantial improvement in his condition, and the extent to which the prisoner presents a risk of danger to himself or other inmates." *Woodall v. Foti*, supra, at 272. In the instant case, Stacie's illness (seizures) were serious. Physicians had prescribed Dilantin for him. He had passed out before, and he had been hospitalized while incarcerated at Parchman. On January 15, 1997, Stacie needed immediate medical treatment at 4:00 P.m. He was likely to be incarcerated for another two years or longer. He was originally sentenced to serve two concurrent five (5) year terms beginning January 30, 1995. He had his fatal seizure about two (2) years into his five (5) year sentence. Under Mississippi's 85% rule, Stacie would have been incarcerated another two years at least. Stacie continued to have seizures. He had three (3) seizures before prison officials were notified in accordance with prison policy. Stacie had a total of seven (7) seizures before he was taken to the prison clinic. Potential harm due to postponed treatment was evident. There was no possibility of improvement in his condition without immediate medical attention. Stacie

was a danger to himself if he did not receive medical treatment. Prison officials knew this, yet they did nothing. Stacie was unable to and prohibited from walking out of prison for medical treatment. He was at the mercy of prison officials. Therefore, the Superintendent as well as other prison officials are liable for their deliberate indifference to Stacie's serious medical needs.[70] "[D]amages are available against a state official who is sued and held liable in his individual capacity."[71] *McCord v. Maggio*, 927 F. 2d 844, 847 (5th Cir. 1991).

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[70] Prison supervisors can be held liable for the deliberate indifference of a prisoner's serious medical needs. *Thompkins v. Belt*, supra. "Supervisors liability exists even without overt personal participation in the offensive act if supervisory officials implement a policy so deficient that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional violation.'" *Thompkins v. Belt*, supra, at 304.

[71] In *Gonsalves v. City of New Bedford*, supra, at 924, a federal district court held:

> [t]here is also ample evidence for the jury to have found that Morris Pina was intentionally and/or with deliberate indifference denied treatment for a serious medical need. The jury could have found from the testimony of Patrick Lawrence and John Hoffman, among others, that Morris Pina was alive several hours after the beating which it found to be established. The jury could infer from pictures taken shortly after Morris Pina's death that they accurately reflect the way he looked shortly before he died. Those pictures depict conditions which a lay person would easily recognize require a doctor's attention. The jury could have reasonably concluded that Morris Pina was denied attention for a serious medical need in order to cause him to suffer knowing that he would suffer, or with deliberate indifference to his suffering.

Likewise, there is ample evidence in this case for the Court to conclude that prison officials intentionally and/or with deliberate indifference

(Continued on following page)

## 2. The 14th Amendment's Right of Access to the Courts

A prisoner has a 14th amendment right not to be deprived of life, liberty, or property "by arbitrary government action." *Williams v. Lane*, 851 F. 2d 867, 879 (7th Cir. 1988). That right includes a "fundamental right under the Constitution to access to the courts." *Barfield v. Brierton*, 883 F. 2d 923, 937 (11th Cir. 1989), *citing Bounds v. Smith*, 430 U.S. 817, 821, 97 S. Ct. 1491, 1494, 52 L. Ed. 2d 72 (1977). "The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution." *Ryland v. Shapiro*, 708 F. 2d 967, 971 (5th Cir. 1983). The right of access to the courts is guaranteed every citizen by the 1st and 14th amendments to the United States Constitution. *Ryland v. Shapiro*, supra, at 971-972. The right of access to the courts "cannot be impaired . . ." *Barfreld v. Brierton*, supra, at 937. In *Bell v. City of Milwaukee*, 746 F. 2d 1205 (7th Cir. 1984), the 7th Circuit Court of Appeals found that, as a matter of policy a state

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denied him treatment for a serious medical need. The Superintendent and other prison officials misspent money appropriated for medical staff and an ambulance. Approximately seven (7) prisoners had died at the "Death Camp" between October 5, 1996 (the day the prison opened) and January 15, 1997 (the day Stacie died) because of a lack of medical care. On January 15, 1997, Stacie had three seizures by 4:00 p.m. Prison officials were notified that Stacie had had three seizures by 4:00 p.m. Yet, medical personnel did not respond. Nor did an ambulance arrive. Instead, other prisoners took Stacie to the prison clinic. Stacie was denied a doctor's attention. An inference could be drawn from these facts that the defendants denied Stacie attention for a serious medical need in order to cause him to suffer knowing that he would suffer or they were deliberately indifferent about his suffering. In either case, the defendants are liable. *Gonsalves v. City of New Bedford*, supra.

statute cannot trump a federal claim based on Section 1983. In that case,

> [t]he district court allowed the plaintiffs to include a special verdict question regarding the violation of Daniel Bell's constitutional rights. The jury found a violation, and awarded $100,000 in damages to the estate of Daniel Bell for the loss of his life and enjoyment thereof. Defendants contend that Wisconsin law does not permit recovery by the estate for the death of Daniel Bell. The district court in ruling upon defendants' post-verdict motions disagreed, holding without explaining that Wis. Stat. Sec. 895.04 allows the personal representative of Daniel Bell's estate to recover for loss of life for the benefit of the estate. The district court also noted that if the Wisconsin wrongful death statute could not be read as allowing the estate to recover, **state law would be inconsistent with the deterrent policies of Section 1983 and therefore could not be applied . . . While the district court's interpretation of Section 895.04 may be in error, its evaluation of the policies behind Section 1983 in regard to Daniel Bell's estate's claim is correct.**

*Bell v. City of Milwaukee*, supra, at 1234-35.

The Court further acknowledged:

> [i]n *a Bivens* action, *i.e.*, an action brought not against state or local officials under Section 1983 but against federal officials directly under the Constitution, the Supreme Court has allowed recovery by the estate notwithstanding restrictive state law.

*Bell v. City of Milwaukee*, supra, at 1237.

Finally, the Court concluded:

> [i]n sum, we hold that Wis. Stat. Secs. 895.01 and 895.04, along with Wisconsin decisions construing those provisions, which would preclude recovery to Daniel Bell's estate for loss of life, are inconsistent with the deterrent policy of Section 1983 and the Fourteenth Amendment's protection of life.[72] The Wisconsin law therefore cannot be applied to preclude the $100,000 damag4es [sic] recovered by Daniel Bell's estate for loss of life.

*Bell v. City of Milwaukee*, supra, at 1240.

Like the Wisconsin statute, the Mississippi Tort Claims Act provision, if construed to bar plaintiff's

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[72] The Mississippi Supreme Court's holding in *Wallace v. Town of Raleigh*, 815 So. 2d 1203 (Miss. 2002), is distinguishable from the instant case. In *Wallace*. the state Supreme Court held that a prisoner did not have a right granted by state law to sue the state or other governmental entities, consequently his due process rights were not violated. *Wallace v. Town of Raleigh*, supra. A property interest giving rise to due process protection is created by state law. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982). Since the *Mississippi Tort Claims Act, §§ 11-46-1, et. seq., Miss. Code Ann. (Supp. 2001)*, did not grant an inmate the right to sue, the inmate did not have a property interest. However, the plaintiffs in the instant case do have a right to sue. The *Mississippi Wrongful Death Statute, §11-7-13, Miss. Code Ann. (Supp. 2001)* vests a right in wrongful death heirs to sue for the wrongful death of their loved one. Therefore, the facts of this case are distinguishable from *Wallace*.

Even if the state Supreme Court would hold that the right to sue a governmental official in his or her individual and official capacity for violation of clearly established law is not a property interest, that holding would be inconsistent with and repugnant to *§ 1983 [42 U. S. C. § 1983]. Bell v. City of Milwaukee*, supra, at 1240; *Graham v. Sauk Prairie Com'n*, supra, at 1104.

wrongful death claim, would be inconsistent with the dictates of *§ 1983 [42 U. S. C. § 1983]*, and therefore would be unconstitutional. *Bell v. City of Milwaukee*, supra, at 1240; *Graham v. Sauk Prairie Police Com'n*, supra, at 1104. Furthermore, the *Mississippi Wrongful Death Statute, §11-7-13, Miss. Code Ann. (Supp. 2001)*, grant plaintiffs a vested property right in pursuing their wrongful death action against the defendant.[73] And, plaintiff has a protected liberty interest in the parent-child relationship. *Bell v. City of Milwaukee*, supra, at 1244-45. The defendants may be held liable for the loss of society and companionship suffered by the plaintiffs and loss of life suffered by the decedent. See, *Bell v. City of Milwaukee*, supra, at 1244-45. The United States Court of Appeals for the Fifth Circuit has "previously recognized the rights of survivors to bring a wrongful death action under sections 1983 and 1988 where authorized by state law." *Ryland v. Shapiro*, supra, at 9713. Consequently, the *Mississippi Tort Claims Act* cannot bar plaintiff's right to pursue their wrongful death claim against the defendants.

### 3. The 14th Amendment's Equal Protection Clause

The State of Mississippi cannot, by statute, bar plaintiffs wrongful death heirs, who are African-American, access to the courts to pursue their wrongful death claim. To do so would be a violation of the 14th amendment's

[73] Even if the *Mississippi Tort Claims Act* barred plaintiff's heirs the right to bring this wrongful death action, the *Act* would be unconstitutional. *Bell v. City of Milwaukee*, supra.

Equal Protection Clause. See, *Bell v. City of Milwaukee*, supra.

**b. The Law Pertaining to Plaintiff's State Claims**

The plaintiff asserted a claim under the *Mississippi Tort Claims Act, §§ 11-46-1, et. seq., Miss. Code Ann. (Supp. 2001)*, and *Mississippi Constitution (1890)*. The plaintiff alleged that the defendants acted deliberately, intentionally, maliciously, and in reckless disregard for the rights of plaintiff's decedent. The Mississippi Supreme Court has held that the *Tort Claims Act, § 11-469(l)(m), Miss. Code Ann. (Supp. 2001)*, "cuts off" an inmate's right to bring a **negligence** action against the State or its employees." *Wallace v. Town of Raleigh*, supra, at 1208, *quoting*, *Sparks v. Kim*, 701 So. 2d 1113, 1114 (Miss. 1997) (emphasis added). However, plaintiff's action is not predicated on negligence. It is predicated on the intentional, deliberate, and reckless actions and inactions of the defendants. In that regard, the instant case is distinguishable from *Wallace v. Town of Raleigh*, supra, and *Sparks v. Kim*, supra. A question of fact exists as to whether Childs was acting outside the course and scope of his employment when he deliberately and maliciously enacted a policy and allowed prisoners to die at the "Death Camp." The *Tort Claims Act's* immunity does not apply whenever an employee's conduct amounts to "malice." *§ 11-46-7, Miss. Code Ann. (Supp. 2001)*; *L. T., ex. rel. Hollins v. City of Jackson*, 145 F. Supp. 2d 750 (S.D. Miss. 2000); *Fortenberry v. City of Hattiesburg*, 758 So. 2d 1023 (Miss. 2000). If Superintendent Childs acted maliciously, and that malice was a cause of Stacie's death, the *Tort Claims Act* would not shield him from liability. *§ 11-46-7, Miss. Code Ann. (Supp.*

*2001)*; *L. T, ex. rel. Hollins v. City of Jackson*, supra; *Fortenberry v. City of Hattiesburg*, supra. In that event, plaintiff would have a viable claim against Childs.

However, since a question of fact exists on the issue of Childs' malice, summary judgment should be denied. *Fortenberry v. City of Hattiesburg*, supra.

## V. THE LAW PERTAINING TO THE DEFENDANTS' DEFENSES

The defendants assert immunity under state law as a defense to plaintiffs action. However, that state law defense is inapplicable to plaintiffs federal law claims. See, *Bell v. City of Milwaukee*, supra, *Williams v. Lane*, supra. It is repugnant to the federal constitution to allow a state law defense to defeat a viable federal law claim. *Bell v. City of Milwaukee*, supra, *Williams v. Lane*, supra. The only defense that could be available to the state defendants on plaintiff's federal law claim is the federal defense of qualified immunity. That defense protects a defendant if the defendant did not violate any clearly established law, *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2732, 73 L. Ed. 2d 396 (1982), and the defendant's actions were objectively reasonable. *Wilson v. Layne*, 526 U.S. 603, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999).

However, the federal qualified immunity defense is not available to the defendants in this case. First, plaintiff's decedent's right to treatment for his serious medical condition was clearly established long before the defendants denied him that care. Furthermore, plaintiff's right to bring a wrongful death action for the constitutional violation of her son's rights was clearly established long before the defendants actions and inactions in this case.

Finally, the record evidence clearly shows that the defendant's actions and inactions were not objectively reasonable. Therefore, the federal qualified immunity defense is not available to the defendants. *Harlow v. Fitzgerald*, supra; *Wilson v. Layne*, supra.

The *Tort Claims Act, § 11-46-9(l)(m), Miss. Code Ann. (Supp. 2001)*, immunity is not available to the defendants on plaintiff's state law claims because the defendants' actions and inactions in this case were malicious. Mississippi's tort claims immunity is unavailable to a defendant who maliciously causes harm. *L.T., ex rel. Hollins v. City of Jackson*, supra; *Fortenberry v. City of Hattiesburg*, supra. Therefore, the state's Tort Claims Act immunity is not available to the defendants in this case.

## VI. CONCLUSION

Since a genuine issue of material fact exists on the issue of the defendants malice in this case, and since plaintiff's federal claims cannot be barred by Mississippi's Tort Claims Act, and since plaintiff has alleged viable federal claims and viable state law claims, this Court should deny the defendants' summary judgment motion.

This the 26th day of June, 2002.

Respectfully submitted,
RUBY CARTER, ETC.,
PLAINTIFF

/s/ Carroll Rhodes

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**IN THE SUPREME COURT OF MISSISSIPPI**

**CASE NO. 2002-CA-01726**

**RUBY CARTER, Individually and on Behalf of the wrongful death heirs, Beneficiaries, and Estate of STACIE CARTER, DECEASED** — **PLAINTIFFS-APPELLANTS**

**VERSUS**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FRED CHILDS, in His Official Capacity as Superintendent of Rankin County, Mississippi Correctional Facility** — **DEFENDANTS-APPELLEES**

**ON APPEAL FROM THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI**

# BRIEF FOR PLAINTIFFS-APPELLANTS

(Filed Mar. 20, 2003)

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## ORAL ARGUMENT IS NOT NECESSARY

* * *

## I. STATEMENT OF ISSUES

1. Did the trial court commit reversible error by granting the defendants' motion for summary judgment on plaintiffs' claims?

2. Does the Mississippi Tort Claims Act, *§ 11-46-9, Miss. Code Ann. (2001),* bar the federal claims of wrongful death beneficiaries of a state inmate?

3. Does the Mississippi Tort Claims Act, *§ 11-46-9, Miss. Code Ann. (2001),* bar the federal claims for punitive damages of wrongful death beneficiaries of a state inmate?

## II. STATEMENT OF THE CASE

### 1. Nature of the Case, Course of Proceedings, and Disposition Below.

This case is an Eighth Amendment[1], Fourteenth Amendment (Due Process[2] and Equal Protection[3]), and Tort Claims Act,[4] case filed by the wrongful death heirs and estate of Stacie Carter, Deceased, against the Mississippi Department of Corrections and Fred Childs, in his individual and official capacities as Superintendent of the

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[1] *U.S.C. Const. Amend. 8.*

[2] *U.S C. Const. Amend. 14* and *Const., Art. 3, Section 14.*

[3] *U.S.C. Const. Amend. 14.*

[4] *Section 11-46-1, et seq., Miss, Code Ann, (2002).*

Rankin County, Mississippi Correctional Facility. [R. 43-48, R. E. 8-13, Tab B].[5]

The plaintiffs filed their original complaint the Circuit Court of Copiah County, Mississippi. The Copiah County Circuit Court entered an Order transferring the case to the Circuit Court of Rankin County, Mississippi. The case was transferred t [sic] to the Rankin County Circuit Court (the trial court) on December 4, 1998.

The trial court entered an Order on February 18, 2000 allowing plaintiffs to file an amended complaint. Plaintiffs filed their amended complaint on March 1, 2000, and the defendants filed their answer to the amended complaint on February 22, 2000.[6]

The parties engaged in discovery from January 11, 2000 until November 20, 2001. The defendants filed their motion for summary judgment on September 7, 2000. [R. 28-30, R. E. 23-25, Tab D]. The plaintiffs filed a response to the summary judgment motion, and they filed an amended response to the motion to dismiss or for summary judgment on June 27, 2002. [R. 211-230, R. E. 26-45, Tab E].

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[5] "R" denotes the Record followed by page numbers, "R. E." denotes the Record Excerpts followed by page numbers and the Tab. The Record page numbers appear in the bottom center of each page. The Record Excerpt page numbers appear in the bottom right corner of each page.

[6] The amended complaint was attached to plaintiffs' motion for leave to file amended complaint. The defendants filed their answer to the amended complaint before plaintiffs formally filed their amended complaint.

The plaintiffs filed a second motion to amend their complaint on January 11, 2002. The trial court entered an Order on January 28, 2002 allowing the amendment. [R. 42, R. E. 80, Tab M]. Plaintiffs, thereafter, filed their second amended complaint on January 30, 2002. [R. 43-48, R. E. 813, Tab B]. The defendants filed their answer to the second amended complaint on March 1, 2002. [R. 49-57, R. E. 14-22, Tab C].

The trial court held a hearing on the defendants' motion to dismiss or for summary judgment and granted the motion on October 3, 2002. [R. 233-241, R. E. 81-89, Tab N]. Plaintiffs timely filed their notice of appeal on October 10, 2002, [R. 242, R. E. 90, Tab 0], and their statement of issues on appeal on October 28, 2002. [R. 266-267, R. E.91-92, Tab P].

**2. Statement of Facts.**

Stacie Carter was a young black male [R. 97, R. E. 46, Tab F] who was born December 6, 1974. [R. 153, R. E. 66, Tab H]. He graduated from Enterprise High School in 1993, and he attended Co-Lin Junior College for one year. [R. 157, R. E. 65, Tab H]. During the Summer of 1992, Stacie was working at Timberlane Campground in Wesson, Mississippi when he had a seizure. [R. 158-159, R. E. 66-67, Tab H]. This was his first seizure. [R. 158-159, R. E. 66-67, Tab H]. He was taken to a local hospital where he was diagnosed with having a brain abscess. [R. 158-159, R. E. 66-67, Tab H]. Stacie had surgery to remove two brain abscesses. [R. 158-159, R. E. 66-67, Tab H]. After the surgery, Stacie continued to have seizures. He was prescribed Dilantin for his seizures. [R. 160].

Stacie lived with his mother, Ruby Carter, in Wesson, Mississippi, until he was incarcerated. [R. 213, R. E. 28, Tab E]. He was charged with and ultimately convicted on two counts of grand larceny by the Lincoln County Circuit Court and sentenced on January 30, 1995 to serve two concurrent terms of five (5) years in the custody of the State of Mississippi. [R. 213, R. E. 28, Tab E].

Stacie was initially incarcerated in the Lincoln County Sheriff's Department, but he was moved first to the Mississippi Department of Corrections Facility at Parchman, Mississippi, and then he was moved to the Rankin County Correctional Facility (RCCC). [sic] [R. 163, R. E. 68, Tab H]. He had several seizures during the time he has been incarcerated. [R. 158-163, R. E. 64-68].

Stacie was housed at Unit 720, B-2, C-Zone during the time he was incarcerated at RCC. [R. 7, R. E. 46]. Unit 720, B-2, C-Zone was a disability camp. [R. 142-143]. The C-Zone opened on October 5, 1996. [R. 98, R. E. 47, Tab F]. There was no heat, no hot water, no table, and no TVs on this ward until just before Christmas in December, 1996. [R. 142-148]. More importantly, there was no ambulance, [R.98, R. E. 47, Tab F], and only two doctors on call a couple days a week for the inmates on this ward. [R. 97, R. E. 46, Tab F]. Funds had been appropriated by the Mississippi Legislature and spent by Mississippi Department of Corrections (MDOC) officials by September, 1996 for an ambulance, medical equipment, training, and doctors but none of that had been done by the time that Stacie died. [R. 99, R. E. 48, Tab F].

There were no guards on duty in the guard towers trained to administer CPR to inmates needing emergency medical care. [R. 97, R. E. 46, Tab F]. The medication for

prisoners on this ward were kept by the guards in the picket (tower). [R. 147-150]. Prisoners needing their medication would have to go to the picket and get the guard on duty to give them their medication. [R. 147-150].

Stacie had a history of seizures while he was incarcerated at Unit 720, B-2, C-Zone. [R. 97, R. E. 46, Tab F]. He had suffered a couple of mild seizures prior to January 15, 15, [sic] 1997. R. 97, R. E. 46, Tab F].

On January 15, 1997, Stacie had a seizure just before Supper, and he had three (3) additional seizures by 4:00 p.m. [R. 130, 135-141, R. E. 79, 57-63, Tabs G & L]. The Correctional Facility had a policy that an inmate must suffer a third seizure before the medical unit would be called. [R. 135-141, R. E. 57-63, Tab G]. Valentino Lewis, an inmate incarcerated with Stacie, went to the picket after Stacie had suffered his third seizure and reported the incident to Catherine Burgess, the only guard on duty. [R. 135-141, R. E. 57-63, Tab G]. Officer Burgess called the medical unit, but the medical unit did not arrive. [R. 135-141, R. E. 57-63, Tab G]. Stacie kept having seizures, so Mr. Lewis went back to the picket to report to Officer Burgess that Stacie was still having seizures. [R. 135-141, R. E. 57-63, Tab G]. Officer Burgess called for the medical unit again, but no one came from the medical unit came [sic] because the facility did not have an ambulance. [R. 135-141, R. E. 57-63, Tab G]. Only an S and E officer arrived with an Army cot. By the time the S and E officer arrived, Stacie had suffered seven seizures. [R. 135-141, R. E. 57-63, Tab G].

Since no one from the medical unit arrived, two inmates placed Stacie on the Army cot and took him to the RCC clinic. [R. 135-141, R. E. 57-63, Tab G]. It was cold

and sleeting. [R. 135-141, R. E. 57-63, Tab G]. There was no one in the clinic. [R. 135-141, R. E. 57-63, Tab G].

At approximately 5:05 p.m., Lt. Kevin Jackson, the third watch commander, informed Capt. Patrick Marion, the institutional watch commander, that Stacie needed to be transferred from the clinic to UMC. [R. 129, R. E. 78, Tab K]. At approximately 5:20 p.m., the ambulance from Rankin General Hospital arrived to take Stacie to UMC. [R. 129, R. E. 78, Tab K]. Sometime after 6:08 p.m., the ambulance left with Stacie en route to UMC. [R. 129-130, R. E. 78-79, Tabs K and L]. Stacie experienced medical complications, and he was taken to Rankin General Hospital. [R. 129, R. E. 78, Tab K]. Stacie died at Rankin General Hospital at 6:37 p.m. on January 15, 1997. [R. 129, R. E. 78, Tab K].

Stacie was not the first inmate to die at the RCC facility because of a lack of medical attention. Between October, 1996, when the RCC facility first opened, and January 15, 1997, a total of seven (7) inmates died, with five (5) or six (6) of the seven (7) being African-American. [R. 104, R. E. 53, Tab F]. At the time Stacie died, there were approximately 600 inmates at the RCC facility. Of those 600 inmates, 60-65%, or 360-390, were African-American. [R. 97, R. E. 46, Tab F]. Unit 720 was a death camp. [R. 97, R. E. 46, Tab F].

The present action was brought by Stacie's heirs – his mother and siblings grounded upon constitutional claims. [R. 158-163, R. E. 64-68, Tab H]. The Mississippi Tort Claims Act only prevents an inmate from suing for state tort damages.

## III. SUMMARY OF THE ARGUMENT

The trial court granted the defendants' summary judgment on the grounds that the Mississippi Tort Claims Act barred plaintiffs' action because their decedent was incarcerated at the time the cause of action arose. The trial court was wrong in its ruling. This Court reviews the grant of summary judgment de novo. A de novo review of the record in this case clearly shows that the plaintiffs had viable constitutional claims and wrongful death claims that are not barred by the Mississippi Tort Claims Act. Plaintiffs' wrongful death claim is a separate tort from the claim of plaintiff's decedent. Since the Wrongful Death Statute creates this separate cause of action for the [sic] Stacie's survivors, this action is not barred by the Tort Claims Act. And, plaintiffs' *Section 1983 [42 U.S.C. Section 1983]* claims are not barred by Mississippi's Tort Claims Act. Therefore, the trial court's grant of summary judgment in this case is reversible error.

The Mississippi Tort Claims Act does not bar plaintiffs' wrongful death and constitutional claims. Plaintiffs' wrongful death claims are separate and distinct claims from any claims that their decedent, Stacie, would have had. The Tort Claims Act does not bar those state law wrongful death tort claims nor plaintiffs' federal *Section 1983* claims.

Finally, the Mississippi Tort Claims Act does not bar plaintiffs' action in seeking to recover punitive damages from the defendants for their willful, deliberate, and malicious conduct in violating their and their decedent's constitution rights.

## IV. ARGUMENT

### A. The Standard of Review Is De Novo.

This Court employs a de novo standard of review when reviewing a trial court's grant of amotion or summary judgmnt. *Hancock v. Mid American Insurance Services, Inc.*, 836 So. 2d 762, 764 (Miss. 2003) (en banc). The Court reviews the record evidence including the pleadings, depositions, answers to interrogatories, admissions, and affidavits in the light most favorable to the party opposing the motion, *Doe v. Stegall,* 757 So. 2d 201, 204 (Miss. 2000), drawing all reasonable inferences in that party's favor. *Gant v. Maness,* 786 So. 2d 401, 403 (Miss. 2001) (en banc). The movant "has the burden of demonstrating that there is no genuine issue of material fact in existence . . . " and movant is entitled to judgment as a matter of law. *Jenkins v. Ohio Casualty Insurance Co.,* 794 So. 2d 228, 232 (Miss. 2001) (en banc). "If any triable issues of fact exist, the lower court's decision to grant summary judgment will be reversed." *Hancock v. Mid American Insurance Services, Inc.*, supra, at 765.

### B. The Trial Court Committed Reversible Error by Granting the Defendants' Motion for Summary Judgment on Plaintiffs' Claims.

When this Court considers the record evidence and all reasonable inferences in the light most favorable to the plaintiffs – the nonmoving party, the Court will be compelled to reverse the lower court's grant of summary judgment. The record evidence reveals that Stacie Carter was an inmate with serious medical problems who was incarcerated at the RCC facility – medical facility. He suffered from seizures. In fact, he had suffered seizures

since his incarceration, and he had been hospitalized at the MDOC faility [sic] at Parchman, Mississippi after suffering a seizure. State funds had been appropriated for the facility to purchase an ambulance and medical equipment and hire medical staff. However, the funds had not been spent for the ambulance, medical equipment, or medical staff. The RCC had a policy of not seeking medical treatment for inmates who suffered seizures until after the inmates had suffered three (3) seizures. Stacie suffered a series of seizures on January 15, 1997. He had his first seizure before 4:00 p.m. [R. 130, 135-141, R. E. 57-63, 79, Tabs G and L]. In all, Stacie had seven (7) seizures in his cell on January 15, 1997 before he was taken [sic] the RCC clinic. [R. 135-141, R. E. 57-63, Tab G]. Guards knew that Stacie was suffering seizures immediately after he suffered his third (3rd seizure).

When Stacie arrived at the clinic, there was no one there to give him medical treatment. The RCC facility did not have an ambulance. An ambulance was summoned offsite, and it arrived at the clinic at 5:20 p.m. – more than one and one-half hours after the first seizure. [R. 129, R. E. 78, Tab K]. The ambulance picked Stacie up and left at 5:40 p.m. [R. 129, R. E. 78, Tab K]. Stacie experienced medical complications at 5:43 p.m., and he was taken to the nearest medical facility – Rankin Medical Center. [R. 129, R. E. 78, Tab K].

Under the facts of this case, the plaintiffs have established both an Eighth Amendment claim, a Due Process claim, and an Equal Protection claim.

**1. The Eighth Amendment Claim.**

The United States Supreme Court has held that the "deliberate indifference to serious medical needs of prisoners constitutes" [cruel and unusual punishment] proscribed by the Eighth Amendment." *Estelle v. Gamble,* 429 U. S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251 (1976). See, also *Hare v. City of Corinth,* 74 F. 3d 633, 639 (5th Cir. 1996) (en banc) ("The constitutional rights of a convicted state prisoner spring from the Eighth Amendment's prohibition on cruel and unusual punishment"). Deliberate indifference may be "manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care." *Estelle v. Gamble,* supra, 429 U. S. at 104-105, 97 S. Ct. at 291; see, also *Hinson v. Edmond,* 192 F. 3d 1342, 1348 (11th Cir. 1998). A prison superintendent who has "direct authority regarding the day-to-day operations of the Penitentiary" may be held liable under the Eighth Amendment for not addressing the medical needs of a prisoner quick enough. *McFadden v. State,* 542 So. 2d 871, 880-881 (Miss. 1989). See, also *Gates v. Collier,* 501 F. 2d 1291 (5th Cir. 1974). Prison supervisors are liable for Eighth Amendment violations for failure to provide medical treatment to inmates if "there either should have been professional medical attention available on the premises on a regular basis, or speedy access to the same." *Thompkins v. Belt,* 828 F. 2d 298, 305 (5th Cir. 1987). In the present case, there should have been professional medical attention available on the premises on a regular basis, or speedy access to the same. Therefore, Childs, as the director of the RCC, is liable to the plaintiffs for prison officials deliberate indifference in allowing Stacie, an inmate who suffered seven (7) or more consecutive

seizures, to go without medical treatment.[7] *Thompkins v. Belt,* supra; *McFadden v. State,* supra. Additionally, the State is liable to the plaintiff for the prison guards' deliberate indifference in obtaining medical treatment for Stacie. *Estelle v. Gamble,* supra, *Gates v. Collier,* supra.

**2. The Due Process Claim.**

The plaintiffs' due process claims are based on the claims of the plaintiff, Ruby Carter, as the mother of the decedent, Stacie, and the wrongful death claims of the survivors and estate of Stacie.

Plaintiff's, Ruby Carter's, due process claim is based upon her right to bring an action against the State of Mississippi and Fred Childs for violation of her liberty interest by causing Stacie's death. A parent has a right to recover under *1983 [42 U. S. C. Section 1983]* "for the unlawful breach of the parent-child relationship by virtue of the child's death . . . " *Bell v. City of Milwaukee,* 746 F. 2d 1205, 1244 (7th Cir. 1984). This right exists even if the child is over the age of 21 when the child dies. *Bell v. City of Milwaukee,* supra, at 1245. The parent has a right to bring a due process claim against the State and prison officials for their actions and inactions in causing the decedent's death. *Bell v. City of Milwaukee,* supra, at 1244-1248. Therefore, Mrs. Carter has a valid due process claim against the defendants.

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[7] "[D]amages are available against a state official who is sued and held liable in his *individual* capacity. *McCord v. Maggio,* 927 F. 2d 844, 847 (5th Cir. 1991).

Her claim is decidedly different from the due process claim of Stacie. While Stacie did not have a due process property interest claim against the defendants, *Wallace v. Town of Raleigh,* 815 So. 2d 1203 (Miss. 2002), both he and his mother had a due process liberty interest claim against the defendants. *Bell v. City of Milwaukee,* supra, at 1244-1248.

The due process claim of the wrongful death survivors of Stacie is based on life and liberty interests of Stacie and his survivors.

### 3. The Equal Protection Claim.

Plaintiffs' equal protection claims are grounded in their right to bring a wrongful death action for the lack of equal protection Stacie received. A wrongful death action is "a tort separate and distinct from other personal injury actions." *Gentry v. Wallace,* 606 So. 2d 1117, 1119 (Miss. 1992) (en banc) The "action is intended to compensate the heirs of the deceased for losses stemming from the death of the injured party." *Id.* at 1120. Wrongful death heirs have a right to bring an action under state law for the unconstitutional death of their loved one. "Prisoners do not surrender their rights to equal protection at the prison gate." *Williams v. Lane,* 851 F. 2d 867, 881 (7th Cir. 1988). Prisoners have a constitutional right not to be treated differently from other prisoners. *Williams v. Lane,* supra.

However, in the instant case, plaintiffs' decedent was treated differently from other prisoners. Stacie was a young African-American male incarcerated at the RCC. Unit 720 where Stacie was housed was a medical facility. Approximately 60-65% of the inmates at that facility were African-American. They did not receive medical treatment.

They did not have an ambulance, medical equipment, or medical personnel although money had been appropriated and spent for those items and personnel. Approximately six (6) or seven (7) deaths had occurred at the facility. It was known as a death camp because of the lack of medical treatment. Of the inmates who died at the facility, five (5) or six (6) of them were African-American. They all died because of a lack of medical treatment. The defendants' policies and treatment of the African-American prisoners including Stacie at Unit 720 of the RCC was disparate and violative of the Equal Protection Clause of the Fourteenth Amendment. *Williams v. Lane,* supra.

### C. The Mississippi Tort Claims Act, *§ 11-46-9, Miss. Code Ann. (2001),* Does Not Bar Plaintiffs' Claims.

The trial court ruled that the Mississippi Tort Claims Act, *§ 11-46-9, Miss. Code Ann. (2001),* bars the claims of Stacie's wrongful death survivors. The trial court ruling on this point of law was in error. Plaintiffs realize that the Mississippi Tort Claims Act, *§ 11-46-9, Miss. Code Ann. (2001),* bars the claims of a state inmate. *Wallace v. Town of Raleigh,* supra. However, the wrongful death claims of wrongful death survivors are distinct torts from the personal injury claims of inmates. *Gentry v. Wallace,* supra, at 1119-1120. And, the constitutional claims of wrongful death survivors of a prison inmate are not barred by any state statute that bar state tort claims. *Bell v. City of Milwaukee,* supra; *Graham v. Sauk Prairie Police Commission,* 915 F. 2d 1085 (7th Cir. 1990). Therefore, the Mississippi Tort Claims Act, *§ 11-46-9, Miss. Code Ann. (2001),* does not bar the claims of Stacie's wrongful death

survivors. *Bell v. City of Milwaukee,* supra; *Graham v. Sauk Prairie Police Commission,* supra.

### D. The Mississippi Tort Claims Act, *§ 11-46-9, Miss. Code Ann. (2001),* Does Not Bar Plaintiffs' Claims For Punitive Damages on Their Constitutional Claims.

The trial court held that the Mississippi Tort Claims Act, *§ 11-46-9, Miss. Code Ann. (2001),* foreclosed any rights the plaintiffs had to punitive damages. The trial court erred in this ruling as well. Punitive damages may be awarded against a governmental official sued in his individual as well as his official capacity for violation of clearly established constitutional precedent. *Bell v. City of Milwaukee,* supra; *Graham v. Sauk Prairie Police Commission,* supra. Plaintiffs sued Mr. Childs in his official and individual capacities. The plaintiff also alleged that the defendants' actions were deliberate and malicious. The plaintiffs have established that they are entitled to punitive damages.

## V. CONCLUSION

On the basis of the foregoing facts and authorities, the plaintiffs-appellants submit that this Court should reverse and remand the decision of the trial court with instructions to proceed with a trial.

This the 20th day of March, 2003.

/s/ Carroll Rhodes
CARROLL RHODES
ATTORNEY FOR
PLAINTIFF-APPELLEE
CROSS-APPELLANT

**IN THE SUPREME COURT OF MISSISSIPPI**

---

**CASE NO. 2002-CA-01726**

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**RUBY CARTER, Individually, and on Behalf of the Wrongful Death Heirs, Beneficiaries, and Estate of STACIE CARTER, DECEASED** — **PLAINTIFFS-APPELLANTS**

**VERSUS**

**MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FRED CHILDS, in His Official Capacity as Superintendent of the Rankin County, Mississippi Correctional Facility** — **DEFENDANTS-APPELLEES**

---

**ON APPEAL FROM THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI**

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# REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

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(Filed Apr. 30, 2003)

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**ORAL ARGUMENT IS NOT NECESSARY**

* * *

## ARGUMENT IN REPLY TO APPELLEES/ DEFENDANTS ARGUMENT

Defendants/Appellees argue in their Brief that plaintiffs' claims are barred by the Eleventh Amendment to the United States Constitution[1] as well as the Mississippi Tort Claims Act.[2] Their arguments are misplaced because the instant action was brought against Fred Childs, in his individual capacity as well as official capacity[3], and plaintiffs raise federal constitutional claims which preempts any state immunity law. This Reply Brief will address the issues and arguments raised by the defendants in their Brief.

### 1. The 11th Amendment Does Not Bar Plaintiffs Federal Claims Against Childs.

Plaintiffs' second amended complaint alleges that the defendants actions violated their decedent's 8th Amendment[4] (U. S. Constitution), and 14th Amendment[5] (U. S.

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[1] *U.S.C. Const. Amend 11.*

[2] *Section 11-46-1, et. seq., Miss. Code Ann. (2002).*

[3] Although the caption of the case indicates that Fred Childs is sued in his official capacity only, the amended complaint clearly states that Fred Childs is sued in both his individual capacity and official capacity. [R. 44, R. E. 9, Tab B]. The defendants admitted this fact in their Answer. [R. 49, R. E. 14, Tab C].

[4] *U.S.C. Const. Amend 8.*

Constitution) Due Process and Equal Protection rights as well as their state constitutional rights and state tort law. [R. 43-48, R. E. 8-13, Tab B]. The defendant, Fred Childs, is sued in both his official capacity and individual capacity. [R. 44, R. E. 9, Tab B]. Mr. Childs was sued as the Superintendent of the Rankin County, Mississippi Correctional Facility in his official capacity. [R. 43, R. E. 8, Tab B]. He was sued in his individual capacity for actions taken or not taken under color of state law.[6] Plaintiffs recognize that

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[5] *U.S.C. Const. Amend. 14.*

[6] Plaintiffs alleged that Mr. Childs, the Superintendent of the Rankin County, Mississippi Correctional Facility (RCC), implemented and carried out a policy of not having trained medical staff on duty or an ambulance at the prison to treat inmates and transfer them to a medical facility where they could be treated. [R 43-45, 49, R. E. 8-10,14, Tabs B & C]. The RCC was supposed to have trained medical staff on duty and an ambulance at the facility, but it did not. [R. 45, R. E. 10, Tab B]. In opposition to the defendants' motion for summary judgment, plaintiffs offered the testimony of James Lyle. Mr. Lyle testified that the facility did not have heat or hot water from October, 1996 until December, 1996 right before Christmas. [R 98, R. E. 47, Tab F]. Funds had been appropriated for an ambulance and doctors at the facility, but the funds had been misspent. [R 98-99, R. E. 47-48, Tab F]. There were staffing shortages of correction officers and doctors at the facility. [R. 100-102, R. E. 49-51, Tab F]. The Third Watch Commanders wrote a report to Capt. Vonnie Armstrong, the Security Administrator, on January 15, 1997 noting that a handicap van and 15 passenger van were needed to transport prisoners. [R. 117, R. E. 72, Tab I]. Capt. Armstrong wrote Capt. Rufus Burks, Jr. on January 16, 1997 stating that a mini ambulance would be a [sic] welcomed. [R. 125, R. E. 76, Tab J]. At the time Stacie died there were staffing or manpower problems at the facility, [R. 103, R. E. 52, Tab 5], and there were not any trained officers to render medical treatment to Stacie. [R. 98-103, R. E. 47-52, Tab F]. The C Zone housed about 600 inmates at the time Stacie died with all of them having medical needs. [R. 103, R. E. 52, Tab F]. Stacie had a history of seizures. [R. 97, R. E. 46, Tab F]. The facility had a policy that medical attendants would not be called until after an inmate had suffered a third seizure. [R. 137-138, R. E. 59-60, Tab G]. Inmate

(Continued on following page)

civil rights suits against state officials in their official capacities are suits against the State. *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S. Ct. 3099, 3105, 87 L. Ed. 2d 114 (1985). However, such suits against state officials in their individual capacities are not suits against the State. *Kentucky v. Graham,* supra, 473 U.S. at 166-167, 105 S. Ct. at 3105-3106. The 11th Amendment bars a *Section 1983* [*42 U.S.C. Section 1983*] action against a State of the United States. *Will v. Michigan Department of State Police,* 491 U. S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989). However, the 11th Amendment does not bar a Section 1983 action against a State official sued in his individual capacity. *Hafer v. Melo,* 502 U.S. 21, 112 S. Ct. 358, 116 L. Ed. 2d 301 (1991). Consequently, the 11th

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Valentino Lewis testified that he followed the facility's policy and notified guards in the tower about Stacie after he had suffered his third seizure. [R. 137, 139, R. E. 59, 61, Tab G]. Stacie had his first seizure before supper, [R. 139, R. E. 61, Tab G], or before 3:00 p.m. [R. 99, R. E. 48, Tab F]. He had his second seizure immediately thereafter, and he had his third seizure before supper. [R. 133, R. E. 60, Tab G]. Mr. Lewis notified Ms. Catherine Burgess, the guard in the tower, immediately that Stacie had suffered his third seizure. [R. 137, 139, R. E. 59, 61, Tab G]. Ms. Burgess called the clinic, and Stacie continued to have seizures. [R. 140, R. E. 62, Tab G]. By the time an S and E officer arrived with an Army cot and took Stacie to the clinic he had suffered seven (7) seizures. [R. 140, R. E. 62, Tab G]. Stacie was not transported to the hospital until 5:43 p.m. – almost three (3) hours after he had suffered his third seizure. [R. 129, R. E. 78, Tab K]. Stacie had serious medical problems, and he went without treatment for about three (3) hours. He endured excruciating and unnecessary pain for an unreasonable amount of time without any medical treatment, medical attention from a physician, or ambulance to transport him to a hospital for treatment. The defendants violated Stacie's 8th Amendment rights.

Amendment does not bar plaintiffs *Section 1983*[7] action against Fred Childs in his individual capacity.

### 2. The Mississippi Tort Claims Act Is Not the Exclusive Remedy.

Defendants argue that the Mississippi Tort Claims Act (MTCA) is the exclusive remedy for plaintiffs' claims, and the MTCA grants immunity to the defendants on all of plaintiffs' claims. Their argument is wrong. The MTCA is not the exclusive remedy for plaintiffs' *Bivens*[8] styled *Section 1983* action.[9] An inmate as well as the personal representative of the estate of a deceased inmate may bring a *Bivens* styled action against prison officials who violated that inmate's 8th Amendment and 14th Amendment rights. *Carlson v. Green,* infra; *Hope v. Pelzer,* 536 U. S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002). As the United States Supreme Court stated in *Carlson v. Green,* supra:

> In short, we agree with and adopt the reasoning of the Court of Appeals, 581 F. 2d at 674-675 (footnote omitted):

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[7] Plaintiffs' *Section 1983* action is based on the defendants' violation of plaintiffs' and their decedent's 8th Amendment and 14th Amendment (Due Process and Equal Protection) rights.

[8] *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).

[9] "*Bivens* established that the victims of a constitutional violation by [a governmental employee] have a right to recover damages against the official . . . despite the absence of any statute conferring such a right." *Carlson v. Green,* 446 U.S. 14, 18, 100 S. Ct. 1468, 1471, 64 L. Ed. 2d (1980).

> "The essentiality of the survival of civil rights claims for complete vindication of constitutional rights is buttressed by the need for uniform treatment of those claims, at least when they are against federal officials. As this very case illustrates, uniformity cannot be achieved if courts are limited to applicable state law. Here the relevant Indiana statute would not permit survival of the claim, while in *Beard* [*v. Robinson,* 563 F. 2d 331 (CA7 1977),] the Illinois statute permitted survival of the *Bivens* action. The liability of federal agents for violation of constitutional rights should not depend upon where the violation occurred . . . In sum, we hold that whenever the relevant state survival statute would abate a *Bivens*-type action brought against defendants whose conduct results in death, the federal common law allows survival of the action."

*Robertson v. Wegmann,* 436 U. S. 584, 98 S. Ct. 1991, 56 L. Ed. 2d 554 (1978), holding that a Section 1983 action would abate in accordance with Louisiana survivorship law is not to the contrary. There the plaintiffs death was not caused by the acts of the defendants upon which the suit was based. Moreover, *Robertson* expressly recognized that to prevent frustration of the deterrence goals of Section 1983 (which in part also underlie *Bivens* actions, see Part II, *supra*) "a state official contemplating illegal activity must always be prepared to face the prospect of a Section 1983 action being filed against him."

*Carlson v. Green,* supra, 446 U. S. at 24-25, 100 S. Ct. at 1474-1475.

The Seventh Circuit Court of Appeals in *Bell v. City of Milwaukee,* 746 F. 2d 1205 (7th Cir. 1984), recognized this important principle of federal law when it held that the *Bivens* styled action by the heirs of a deceased inmate against prison officials was not barred by a state immunity law. Likewise, the *Bivens* styled action of the plaintiffs in the instant case is not barred by the MTCA. In other words, the MTCA is not the exclusive remedy for plaintiffs' *Bivens* styled action. *Carlson v. Green,* supra; *Bell v. City of Milwaukee,* supra.

Furthermore, plaintiffs alleged and proved that the defendants conduct in this case was malicious. This Court has held that the MTCA immunity provisions are unavailable to a defendant who maliciously and intentionally causes harm. *L. T. ex. rel. Hollins v. City of Jackson,* 145 F. Supp. 2d 750 (S. D. Miss. 2000); *Fortenberry v. City of Hattiesburg,* 758 So. 2d 1023 (Miss. 2000). Therefore, the MTCA is not the exclusive remedy to plaintiffs' claims of harm caused by the malicious and intentional actions and inactions of the defendants.

### 3. Plaintiffs' Survival Claims Are Not Barred by the MTCA.

Defendants argue that the MTCA bars plaintiffs' survival claims. That argument is also wrong. The United States Supreme Court has held that "*Bivens* actions are a creation of federal law and, therefore, the question whether respondent's action survived [the decedent's] death is a question of federal law." *Carlson v. Green,* supra, 446 U. S. at 23, 100 S. Ct. at 1474. The Court went

on to adopt a "uniform federal rule of survivorship" that redress constitutional violations. *Carlson v. Green,* supra, 446 U.S. at 23, 100 S. Ct. at 1474. That uniform federal rule of survivorship allow [sic] heirs to bring a *Bivens* action against state officials who deprive their decedent of constitutional rights. *Carlson v. Green,* supra; *Bell v. City of Milwaukee,* supra.

Furthermore, the United States Supreme Court has repeatedly held that state sovereign immunity laws do not preclude a *Bivens* styled action against state officials sued in their individual capacities for unconstitutional conduct. *Hafer v. Melo,* supra; *Carlson v. Green,* supra; *Felder v. Casey,* 487 U. S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988); *Hutto v. Finney,* 437 U. S. 678, 98 S. Ct. 2565, 57 L. Ed. 2d 522 (1979); *Kimel v. Florida Board of Regents,* 528 U. S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522 (2000); *Fitzpatrick v. Bitzer,* 427 U. S. 445, 96 S. Ct. 2166, 41 L. Ed. 2d 614 (1976).

**4. Fred Childs Has Not Established the Qualified Immunity Defense.**

The defendants argue that Fred Childs has established the qualified immunity defense, and therefore, he is not liable to the plaintiffs. Fred Childs has not established the qualified immunity defense, and he is liable to the plaintiffs for his constitutional violations that resulted in the death of their decedent. Qualified immunity is an affirmative defense that must be raised and established by the defendant asserting it. *Harlow v. Fitzgerald,* 457 U. S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). "The threshold inquiry a court must undertake in a qualified immunity analysis is whether plaintiff's allegations, if true,

establish a constitutional violation." *Hope v. Pelzer*, 536 U. S. 730, 736, 122 S. Ct. 2507, 2513, 153 L. Ed. 2d 666 (2002). In order to find the defendant liable, the court must find that the defendant violated clearly established constitutional law. *Harlow v. Fitzgerald,* supra. "For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Hope v. Pelzer,* supra, 536 U. S. at 739, 122 S. Ct. at 2515. On January 15, 1997, the law was clearly established that failure to promptly treat an inmate with epileptic seizures amounts to a deliberate indifference of the inmate's medical needs in violation of the Eighth Amendment to the United States Constitution. *Miranda v. Munoz,* 770 F. 2d 255 (1st Cir. 1985); see also, *Gates v. Collier,* 501 F. 2d 1291 (5th Cir. 1974). Fred Childs knew or should have known that Stacie suffered from epileptic seizures. He had a history of suffering such seizures before he was incarcerated. He had been hospitalized at the prison facility at Parchman, Mississippi before being transferred to RCC. The RCC was a facility for medically ill inmates. Stacie's medical illness was seizures. Fred Childs should have known that the facility should provide prompt medical attention to inmates suffering seizures. Nevertheless, he had in place an arbitrary policy that prison guards would not be notified that an inmate was suffering a seizure until after the inmate had suffered his third seizure. He also knew or should have known that an ambulance and trained medical staff were necessary to treat and promptly transport an inmate suffering a seizure to a hospital for prompt medical attention. And, he should have known that inmates suffering seizures need to take their medication. Yet, the RCC had a policy of keeping inmates medications in the tower and administering the medications only

upon a schedule. The policies implemented and enforced by Fred Childs evidenced a deliberate indifference to Stacie's health. And, those policies proximately caused Stacie's death. *Miranda v. Munoz,* supra; *Gates v. Collier,* supra.

### 5. The Due Process and Equal Protection Claims.

The defendants did not cite any authority for their arguments in their Brief on plaintiffs' due process and equal protection claims. The plaintiffs, therefore, rely on their Opening Brief and do not see a need to respond to the defendants' unsubstantiated arguments on these issues.

### 6. The Mississippi Tort Claims Act is Unconstitutional.

The defendants argue that the provisions of the MTCA that preclude any type of action, including a *Bivens* type action on behalf of a state inmate or his survivors against state officials, is constitutional. That argument is wrong. The United States Supreme Court has held that a state sovereign immunity law cannot preclude a *Bivens* type action against a state official in his individual capacity for unconstitutional conduct. *Hafer v. Melo,* supra; *Carlson v. Green,* supra; *Felder v. Casey,* supra; *Hutto v. Finney,* supra; *Kimel v. Florida Board of Regents,* supra; *Fitzpatrick v. Bitzer,* supra. If the lower court's holding is correct that the MTCA bars such actions, then the MTCA is unconstitutional.

### 7. Punitive Damages Are Allowed Under Section 1983.

The defendants argue that the MTCA prohibits an award of punitive damages against Fred Childs in his individual capacity. They are wrong. Although the plaintiffs did not ask for punitive damages in their complaint and amended complaints, the trial court addressed the issue of puntive damages in its Memorandum Opinion and Order. [R. 240, R. E. 88, Tab N]. The trial court's ruling regarding punitive damages is in error. That is the reason the issue is raised on appeal.

Essentially, the trial court ruled that plaintiffs are not allowed to recover punitive damages in this case. To the extent the lower court's ruling prevent plaintiffs from recovering punitive damages on their MTCA claims, that ruling is correct. *§ 11-46-15, Miss. Code Ann. (2002).* To the extent the lower court's ruling prevent plaintiffs from recovering punitive damages on their *Bivens* styled claims, that ruling is in error. Plaintiffs may recover punitive damages against a state official sued in his individual capacity. *Hafer v. Melo,* supra; *Carlson v. Green,* supra; *Carey v. Piphus,* 435 U. S. 247, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978).

## V. CONCLUSION

On the basis of the foregoing facts and authorities and the facts and authorities contained in plaintiffs-appellants Opening Brief the plaintiffs-appellants submit that this Court should reverse and remand the decision of the trial court with instructions to proceed with a trial.

This the 30th day of April, 2003.

/s/ Carroll Rhodes
CARROLL RHODES
ATTORNEY FOR PLAINTIFF-
APPELLEE-CROSS-APPELLANT

[1] IN THE CIRCUIT COURT OF
RANKIN COUNTY, MISSISSIPPI

RUBY CARTER, INDIVIDUALLY, AND ON BEHALF OF THE ESTATE OF STACIE CARTER, DECEASED — PLAINTIFFS

VERSUS — CIVIL ACTION NO. 98-238

THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. — DEFENDANTS

**********

DEPOSITION OF JAMES LYLE

**********

APPEARANCES NOTED HEREIN

Deposition Taken at the Instance of
the Plaintiffs
In the Mississippi Correctional Facility
Rankin County, Mississippi
On Tuesday, November 20, 2001
Commencing at 3:28 p.m.

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ALSO PRESENT: MS. RUBY CARTER
MR. CARL CARTER
MS. CHERYL CARTER
MR. ANDRAE CARTER
MS. ALMA CARTER

[3] JAMES LYLE,

having been duly sworn, testified as follows:

EXAMINATION BY MR. RHODES:

Q. Would you state your name, please.

A. My name is James Martin Lyle IV.

* * *

[4] BY MR. RHODES:

Q. What is your age?

A. Forty-nine.

Q. And where are you currently a resident?

A. South Mississippi Correctional Institute in Leakesville, Mississippi.

Q. Leakesville? When were you first – when were you sentenced to –

A. I was sentenced October 4th, 1993.

Q. And what was the crime that you were sentenced for?

A. Transfer of less than an ounce of marijuana.

Q. From which –

A. From Harrison County. The case is back before the Supreme Court.

Q. Okay. What was your sentence?

A. Nine mandatory years.

Q. What is the extent of your education?

A. I have a college education. I graduated

* * *

[10] Q. Okay. Let me ask you, do you know about Stacie Carter?

A. Yes, I do.

Q. Okay. Could you tell us what you know about Stacie Carter.

A. Well, Stacie was a young black man that was housed at 720, B-2, C-zone, and he had a history of seizures from what I knew. I didn't know him too well personally, but he used to play basketball and stuff out there.

And I was working in administration. And he had had some seizures and –

Q. Excuse me. Let me – let me interrupt you just one moment. He had had seizures while he was here at Rankin County?

[11] A. Right.

Q. Do you know about how many he had had while he was here at Rankin County?

A. Well, he had just had a couple, but they were – seemed to be minor ones that he didn't – he didn't really have to have a lot of medical treatment for.

Q. Okay.

A. But at this time, let me explain to you, I was brought down from Parchman. I worked at the 29 law library.

Q. Okay.

A. And I was brought down to open up the law library at 720 when it first opened up. And when I got down here, the facility was not complete. A-building was full, B-building was full, but C-building wasn't even complete. And B-building, where I was at, we didn't have heat for three months. So they gave out extra blankets. We didn't have tables, we didn't have hot water, we didn't have TVs in the zones at that time. But they went ahead and stuck us in here.

There was no ambulance

Q. For three months?

A. For three months. There was no medical [12] doctors. There was two doctor – there was a doctor on call two days a week. There was nobody trained in the towers to notice or be able to give even CPR to inmates if they were having problems.

And I wrote an article that was published. I think I sent a copy to – with some other paperwork to either Stacie's sister or somebody. I had an address to send it to.

Q. Alma?

A. And I sent a copy of that article that I had published about Stacie and another black man who had who died of a heart attack the same week. And –

Q. Now, when you say another black man who died of a heart attack –

A. Right.

Q. – died here at Rankin County facility?

A. Right. 720.

Q. At 720?

A. Right. And I think I sent a copy of the watch commanders report on that one, too, along with the ones on Stacie, because I was up there –I – did all the typing. I did a lot of the typing of the reports and stuff.

Q. But you typed there reports that the officers –

[13] A. Well, the reports –

Q. – submitted –

A. – that were submitted that –

Q. The monthly reports?

A. – reported – the monthly reports, right. And I think I sent copies of that out –

Q. Okay.

A. – at one time. And I was getting ready to write another article that was to be published, but I had a meeting with John Grubbs and C. Puckett and the warden here, Jack Donley; and they basically blasted me for what I was doing.

And – but I – I came prepared because I brought an article that I had out of the Clarion-Ledger saying that they had spent 800 and something thousand dollars on this new medical facility for a new ambulance, which we didn't have, for trained medical staff, which we didn't have, and all this stuff.

And I showed them – I said, "Well, where is all this?" And I said, "You have to call Rankin General to get an ambulance to come. It takes 20 minutes." And I said, "Not only Stacie Carter, but all of these other men who have died, if we'd have had an ambulance here and medical staff here, they [14] wouldn't have died."

Q. Let – let me back up a minute.

A. Uh-huh (affirmative).

Q. When did this facility open?

A. October 5th, 1996.

Q. When did you come down?

A. October 25th, 1996.

Q. Now, you said when it – while you were in this facility – was that Unit 720?

A. 720, B-2, and I was in D-zone.

Q. D-zone.

A. Stacie was in C-zone.

Q. While you were in this unit, you said the first three months you didn't have heat?

A. No heat.

Q. Or no hot water?

A. No hot water.

Q. So that would have been from October the 25th to –

A. At the end of October, November, and December. Finally right before Christmas, we got you know, it wasn't quite three full months or anything.

Q. Okay.

A. And before Christmas we got the heat and [15] the hot water. They finally got – the contractors finally got the things fixed.

Q. Got the heat and hot water?

A. Right.

Q. What about the ambulance? Were they supposed to have the ambulance here when you first got here?

A. Right. There was supposed to be an ambulance. It was published – the article was published. I have a copy – I have the article. I didn't send y'all a copy. If I'd have known – and ahead of time – I had a file that I kept copies

of stuff, the article that I wrote, the article from the Clarion-Leger about how much money had been spent on this new medical facility that they were taunting, you know, that they were letting the public know, about, and the stuff that happened to me afterwards, how I was retaliated. I kept it in a separate file. I've got it in – I've got three great big boxes of legal work that I cart around with me whenever I moved, because I have a lot of cases that I'm doing for now only myself but for other inmates.

Q. Okay.

A. And if I would have known ahead of time, I would have brought that today; and y'all could have [16] had it. I would have given it to you or I could – give me a card or something and I'll send it to you.

Q. Okay. I'll give you a card and you can send it to me.

A. And some of that I think you've already got that I sent, but there's some other stuff in there that I don't believe y'all have.

Q. Okay. But, now, when you – when did you have this meeting with Grubbs and Donley?

A. It was in July.

Q. July of '97?

A. July of '97. And it was on a Friday. I'm trying to think exactly the date. I guess it was the 7th, because they moved back me to Parchman on the 10th. They come got me and moved me, because we had a big argument and a big disagreement.

And that was on Friday, and then Monday morning they come packed me up and moved me back to Parchman and put me in a – I was the only nonblack in the zone in this – in this building that they put me in, Unit 29, H-building. And it was another one of those retaliatory-type moves, but because I knew a lot of guys that knew that I worked at the law library and everything and a lot of older black convicts and the sergeant and all of them, I had no problem in there.

[17] They moved me back there thinking that something was going to happen to me, but it didn't –

* * *

Q. Okay. Now, between October of 1996 and July of 1997, it's your understanding that MDOC was supposed to have had funds approved for an ambulance here for –

A. Right. Funds approved and spent.

Q. Spent. And the funds spent.

A. Right. That's what was published in the Clarion-Ledger. Funds approved and spent for the [18] opening of this new medical facility.

Q. For an ambulance at the Rankin County facility.

A. Right. They said that there was a brand-new ambulance purchased and also medical equipment, training, doctors available. It was a quite lengthy article in the Clarion-Ledger, and I believe it was – if I'm not sure – it was – it was September of 1996 when it was published. And you might be able to, if you have some contacts at the Clarion-Ledger, go back and get that. But I've got a copy of it, and – but it was published in September of '96 before the new facility opened.

Q. Okay.

A. And it was saying how much they had spent on the facility.

Q. All right. Let me ask you on January 15th of '97, the time Stacie died, did they have an ambulance here –

A. No.

Q. – at the facility?

A. No.

Q. What about the medical staff that was here?

A. It was only nurses. It was only two [19] nurses. And –

Q. Now, did those –

A. – when Stacie started having his seizures on the other zone, Officer Burgess was in the tower. And she didn't –

Q. Officer Burgess?

A. Burgess.

Q. What was her first name?

A. I don't remember her first name. I think I've got it somewhere, but I – I believe it was Officer – Officer Burgess.

Q. Catherine Burgess?

A. Right. I – I – I don't remember –

Q. Okay.

A. – the first name, but I've got it. Like I said, in the file I've got a lot of notes and stuff that I took when it happened and after it happened. And . . .

Q. But let me stop you there. You said Officer Burgess was in the tower.

A. Yeah.

Q. What tower are you referring about?

A. B-2 tower. She was in there by herself.

Q. B-2?

A. Right. And –

[20] Q. What about a Lieutenant Jackson? Was he – Kevin Jackson? Do you know if he was in the tower?

A. Huh-uh (negative). He may have come later, but he wasn't in the tower when Stacie first started having the seizures.

Q. Do you know about what time it was that Stacie first started having his seizures?

A. I can't – it was in I remember –

Q. Was it about 4:00?

A. It was in the afternoon, but – I – I had just come back in, and – but we closed up everything at 3:00.

Q. Let me ask this: Was it around suppertime that –

A. It was before we were eating dinner. Right.

Q. He started having seizures right before you started eating dinner.

A. Right. It was – it was in the afternoon, but like I said, exact time I couldn't give you. And –

Q. Okay.

A. – from what I understand, from what I was told from the guys who were on the zone with [21] him – I was in another zone.

Q. Okay.

A. And when – when all the commotion – because they were banging on the windows and everything else trying to get him, because Stacie was having consecutive seizures. And they were trying to get Officer Burgess to call. And from what I understand, she did call. And finally some – two security guards come down to the building; but, see, they didn't have any stretchers or no gurneys or nothing. And it was sleeting outside. It was very cold. And someone come and got my attention and said, "You need to come check this out. There's somebody" – "somebody is having problems on the other zone."

At first I thought it was a fight or something, so I went to the window and a bunch of guys were standing at the door of D-zone looking out. And I was standing there watching. And they finally went in and got Stacie and pulled him out, and they had him covered with a sheet and blanket and part of a – I couldn't see if it was a mattress or not. But they picked him – had two inmates pick him up and carry him out of the building.

Q. Was he on a gurney?

[22] A. No gurney.

Q. No gurney?

A. There was no gurneys in the building. They just – my understanding – when I left there, there was still no gurneys in any – any of the buildings, and I left in July of 1997.

Q. They carried him out with a – did they carry him out on a stretcher?

A. No stretcher. They didn't have a stretcher.

Q. They just picked him up by his –

A. Picked him up –

Q. – by his ex – his arms and legs?

A. Well, no. There was a blanket and a sheet, and I couldn't see if there was a mattress or not underneath the blanket. But they were carrying him on something. The two inmates carried him, and the officer took him out of the building. And this is where – I mean, he looked – he – he was out. I mean, he was just laid out.

Q. Okay. Now –

A. Not – not –

Q. Do you know the names of the officers that came?

A. I do, but I – I can't – I've got those [23] in my notes. I can't recall that.

Q. Do you have them written down somewhere?

A. Yes, in my file. I said I'd be glad to send that to you.

Q. Okay.

A. I think in the report – in the – in the monthly report –

Q. Monthly report?

A. Yeah. I'm not sure, because it's been so long. The monthly report that I – that I did . . .

Q. I have two monthly reports.

A. Yeah, these look . . .

Q. The one done January 13th of '97 supposedly covered the period from January 16th through February the 15th.

A. Right. These are –

Q. And at the – on – and on that report, the one that's January 13th of '97 –

A. Uh-huh (affirmative). Right.

Q. – in the last paragraph, it start January the 15th of '97, it states it happened – it states . . .

A. The last paragraph? Yeah. Stacie Carter, medical treatment, B-2 C-zone to Rankin General Hospital ER room. Stacie Carter expired at [24] approximately 1814 hours at Rankin General Hospital.

He – this is the reports that I did, and these are the – I believe these are the copies that I sent.

Q. You actually typed the report for the officers?

A. Right. I was – I was the one who typed these.

Q. Okay.

MR. RHODES: I'm going to have the first one, which is the January the 15th report, Exhibit 1, and the January 13th report marked Exhibit 2.

(Exhibit Nos. 1 and 2 marked.)

BY MR. RHODES:

Q. Just so I can make sure that the record is clear, Mr. Lyle – or Jim – if you don't mind me –

A. Right.

Q. – calling you Jim.

A. Right.

Q. Exhibit 1 is the monthly report –

A. Okay.

Q. – from Lieutenant Jackson and Harris to Captain Vonnie Armstrong?

A. Right.

[25] Q. And you typed that report?

A. Yes, I did.

Q. Okay. And Exhibit 2 is a monthly report. This one is dated January the 15th of '97 from Lieutenant Harris and Lieutenant Jackson to Captain Armstrong, and you typed that report.

A. Yes, sir. I typed all these reports in January and February.

Q. Okay. Now, where did you get the information from to type those reports?

A. They would come from notes and from – they would give me incident reports, and the officers would give me notes on stuff that I had to have in there. And a lot of times I had to just put it – put it in there – put it in my own words, just have to rephrase stuff and everything because they didn't – they didn't have – they didn't write very well.

Q. Okay.

A. So, you know, they just give me the notes. And then the incident reports were pretty well put together, and usually inmate clerks were the ones who typed up the incident reports. And that's what were given to me, all the – because that's what we had then is inmate clerks in all the buildings.

Q. Okay.

[26] A. And I trained a lot of them on the typewriters.

Q. Okay. And you prepared those and you also sent a copy to –

A. Right. Yes, I did.

Q. – to Stacie's family.

A. Yes, I did.

Q. Okay. Let me hand you a copy of a letter and ask if you can identify that letter.

A. (Examined document.) Yes, it's my letter. That's the article that I wrote about this being a death camp back there.

Q. Okay.

MR. RHODES: I want to have that marked as the next exhibit.

A. And that's –

BY MR. RHODES:

Q. Wait a minute.

(Exhibit No. 3 marked.)

Q. And let me hand you another exhibit and ask you if you can identify that exhibit.

A. (Examined document.) Yes. It's another letter I wrote to Ms. Alma Clay.

Q. Okay.

MR. RHODES: I want to have that marked.

[27] A. And this is the article that was printed.

(Exhibit No. 4 marked.)

A. This is the article that I – this is the letter I wrote to Ms. Alma Clay, and it's a copy of the article that was published. And I have a copy of the original article.

BY MR. RHODES:

Q. Okay. Let me hand you another exhibit and ask you if you can identify that exhibit.

A. (Examined document.) Yes. It's a monthly report for January 16th, 1997.

Q. Is that a monthly report that you drafted?

A. That I –

Q. You typed?

A. That I drafted and typed, put together, because it was usually early in the morning, 12:00, 1:00 in the morning when I finally got around to doing all these reports.

Q. Okay.

MR. RHODES: Let me have that marked as the next exhibit.

(Exhibit No. 5 marked.)

BY MR. RHODES:

Q. Now, that monthly report, the last one I [28] handed you, which is Exhibit 5, and Exhibit 1 and 2, the first monthly reports, in it it talks about a lack of staffing –

A. Right.

Q. – and manpower.

A. Right.

Q. What did the officers tell you or give you about staffing and manpower problems?

MR. CARSON: Object to the form of that.

BY MR. RHODES:

Q. Let me ask you this: The reports, Exhibits 5, 1, and 2 –

A. Right.

Q. – that contain references to staffing and manpower –

A. Right.

Q. – who wrote those reports?

A. Basically those reports were written by Vonnie Armstrong.

Q. Okay.

A. And notes and incident reports and stuff from the – the – each – each building unit administrator turned in paperwork to me, and I went through them and put these reports together.

Q. So you actually went through what they [29] gave you –

A. Right.

Q. – and actually typed the reports which are exhibits 1, 2, and 5.

A. Right.

Q. In Exhibits 1, 2, and 5, there are references about shortage of manpower.

A. Right.

Q. What do you recall being given to you by the various officers concerning shortage of manpower?

A. Well, there was – the shortage of manpower – I believe what they were talking about is that – that they didn't – they couldn't hire enough people to work the – the staff for the eight-hour shifts. There's three shifts. And they were having a lot of officers that were having to work double shifts because they didn't have enough. And then officers were quitting.

And there was supposed to be two officers in the tower, so they could watch each zone, because one officer can't watch both zones at the same time because you got 60 men on each zone. And it's impossible to answer the phone, open the doors, log in mail, do all these things for one person; and it's supposed to be a nonsmoking – and that's another – [30] another lawsuit.

But anyway, it's impossible for one officer to be able to watch 120 men in two separate zones when she's in there by –or he's in there by himself. And that's what they were talking about. They didn't have enough staff there.

And also Mr. – Vonnie Armstrong, I know this man. I've – he was deeply concerned because of the medical problems there because he saw inmates dying, and there's nothing he could do. And we talked about it.

Q. What did Mr. Armstrong tell you?

A. Well, he was just concerned that there wasn't doctors on staff. He said, "This is a damn medical facility, but we don't even have any doctors here to take care of the inmates. We don't have the proper staff." And – and he said his officers in the tower – I mean, he said, "We're so shorthanded. How are they supposed to" – I mean, they – I mean, they're human beings. They feel the same thing as we all do; but, you know, they can only do so much and they're not medically trained, and that's what he was concerned about.

And it's – Wood Brown was the – was the warden at that time, and we used to have warden call. [31] and I was one of the main advocates that kept bringing it up to him. I said, "Mr. Brown, where are these trained officers that's supposed to have training in medical treatment?"

And he said, "Well, they're" – "they're being trained. They're being trained. They'll be on" –

And for the whole nine months that I was there, we never had any.

Q. But –

A. And we didn't have – didn't have an ambulance; and like I said, we had doctors only a couple of days a week and then on call. But, you know, you – this is a medical facility. You've got people with all kinds of ailments from bad hearts to cancer to emphysema, COPD, all kinds of physical extremities cut off and stuff like that. All kinds of the different medical ailments. And when you got that many people, you know, then you've got to have staff on duty at all times, especially not only security staff but your medical staff because that's what – it's a medical facility.

Q. Okay.

A. And he just – he just – he just sounded like his hands were tied because, you know, he can't [32] go out and hire anybody that – you know, that – and he can't bring, you know – he was just frustrated. And every time someone died, you know, it was a frustration for him and some of the other staff.

Q. Do you know whether or not Mr. Armstrong complained that there was not any funding to hire people or if there was funding available but people weren't hired?

A. Well –

MR. CARSON: Object to the form of that.

A. I can't speak for what he –

BY MR. RHODES:

Q. No. I said, did he ever tell you?

A. No. He – well, he just said that –

Q. You didn't –

A. He just – he didn't ever say that there was any funding or anything like that. He just said that we just don't have enough officers. We just don't have enough staff. They need to hire some more, and stuff like that.

Q. Okay. Do you know about inmate George Killingsworth?

A. George Killingsworth? Yeah. He had died I think in A-1 – in A-building.

Q. And he died, what, in February? Around [33] February?

A. February. Right. Right. And I've – I've got a file on him too.

Q. Okay.

A. And . . .

Q. And at the time that Mr. Stacie Carter died on January the 15th of 1997, was there staffing problems or manpower problems?

A. Yes, there was.

Q. Was there an ambulance here?

A. No.

Q. What about the officers being trained in – to render medical treatment? Had they been trained by –

A. No.

Q. – January the 15th?

MR. CARSON: Object to the form on that.

BY MR. RHODES:

Q. If you know.

A. No, there was none.

Q. Okay.

A. There was none that had been trained that could – that could render any type of medical – even just CPR – basic CPR. None. And this was told to me, and I had brought it up to Wood Brown many times [34] about this. And even Jack Donley and I had several conversations, because he would come from this office down there and talk to me, because I wrote him several letters about, you know, this thing.

And that's like – it – it all came to a head because we lost some other inmates, and I was getting ready to write another letter to the – and put it out what was happening again. And that's – that's when we had that meeting and they sent me out of here, you know.

Q. Okay.

A. And – but it's just the fact that for nine months that I was here, no ambulance, very few, like I said, doctors on call, and doctor only two days a week, nurses, and no medically trained staff in the buildings. And it's understaffed as far as security. That was a big thing that he was concerned about. Security.

Q. While you were here back in 1997, from October of '96 through July of 1997, about how many inmates would be here, let's say, an average in a month?

A. At that – at 720?

Q. Yes.

A. At that – when I left it was fully – it [35] was around 700.

Q. Around 700 inmates?

A. About 7- – 700 inmates. When we first opened up, it was – A-building and B-building was filled, and C-building was under construction. I think around the end of December or January, C-building was finished; and it opened up and it housed – C-1 and C-2 housed mostly your special needs psychiatric patients that had psychological problems.

But when I left it was probably around 700. From February up to the time I left, it was averaging around 700 inmates.

Q. Okay. Back in, let's say, about January of 1997 at the time that Stacie Carter died, about how many inmates were there?

A. Probably – I'm not sure if C-building was completely full at that time, but probably looking at 600.

Q. About 600 inmates –

A. Right.

Q. – in January of '97?

A. '97.

Q. Out of those 600 inmates in January of '97, what percentage would you say were African-American?

[36] A. Probably 60, 65 percent.

Q. And all of the inmates that were in the 720 unit had medical needs?

A. Right. Right. That's the reason we were here. Medical Class 3, 4, and 5.

Q. Okay. And for the 700 inmates, let's say, from February on, what percentage were African-American?

A. Probably about the same percent.

Q. About the same percent?

A. Right. It's – it's – I believe now it's about – when I left on the 16th of October of this year – I just moved down there – I think it was about 63 percent black, 37 percent white.

* * *

[37] Q. Okay.

A. And from just about the – in November it started – they started dying in November, and then December, January, February, seemed like we were losing about two a month.

Q. Okay. I was going to say, between October of '96, when the facility first opened, and January the 15th of 1997, about how many inmates had [38] died?

A. Seventeen, I believe, was the last –

Q. I mean, I'm – just from –

A. I mean – oh.

Q. – from October to the time that Stacie –

A. To January?

Q. – died in January?

A. Oh. About – I think seven.

Q. About seven?

A. I think about six or seven had died at that time. We were losing about two a – two a month.

Q. And of those seven inmates, how many were African-American?

A. I think at that time five or six. It was only one white man that died. An old white man died of pneumonia, I believe.

* * *

**EXHIBIT 1**

Mississippi Department of Corrections
*Rankin County Correctional Facility*

5001 Hwy 468 [LOGO] P.O. Box 88550
Pearl, MS 39208-8850
601-932-2880

TO: CAPT. VONNIE ARMSTRONG
SECURITY ADMINISTRATOR
CMCF 3, AREA IV

FROM: LT. ALVIN HARRIS
LT. KEVIN JACKSON
THIRD WATCH/WATCH COMMANDER

DATE: 13 JANUARY 97

SUBJECT: MONTHLY REPORT FOR JANUARY 1997

* * *

INMATE MOVEMENT & INCIDENT'S

15 JAN 97 OFFENDER ANTONE HEDRICK# 65395 MOVE FROM CMCF/3 C/2 C/ZONE BED# 146 TO CMCF/3 C/1 A/ZONE BED# 60 ADMINISTRATIVE MOVE, OFFENDER MAURIE 383841 MOVE FROM CMCF/3 C/2 C/ZONE BED# 147 ADMINISTRATIVE MOVE, OFFENDER MELVIN TRUTT# 75127 CMCF/3 C/2 C/ZONE BED# 172 TO CMCF/3 C/2 C/ZONE BED# 164 ADMINISTRATIVE MOVE OFFENDER STACY CARTER #35467 MOVE FROM CMCF/3 B/2 C/ZONE BED# 152 TO UMC, EMERGENCY MEDICAL TREATMENT, STACY CARTER 36467 MOVE FROM CMCF/3 B-2 C/ZONE BED#0152 TO RANKIN GENERAL HOSPITAL ER ROOM, STACY CARTER EXPIRED AT APPROXIMATELY 1814 HRS. AT RANKIN GENERAL HOSPITAL. OFFENDER JAMES RUBEN BROWN

MOVE FROM CMCF/3 C/1 D/ZONE BED#204 TO CMCF/3 C-2 A/ZONE ADMINISTRATIVE MOVE, OFFENDER RICHARD WASHINGTON #44383 CMCF #R&C E/BED#99 TO CMCF# C/2 D/ZONE ADMINISTRATIVE MOVE OFFENDER MILLER ROBINSON MOVE FROM CMCF/3 B/2 D/ZONE BED#0178 TO UMC, REMOVE FROM COUNT.

* * *

II. PERSONNEL, SPACE AND EQUIPMENT NEEDS:

PERSONNEL:

To operate effectively and safely in this environment, manpower is desperately needed in the security area of the Area IV Administration Building. Area IV Clinic has opened requiring security on each shift. This creates a drastic shortage of manpower to the Third Watch. Four(4) additional Officers are needed to man this post. The Maximum Security Unit is not yet operational, in the event it does five (5) additional officers will be required to maintain it. When the Sally Port becomes operational an additional four (5) officers will be required to man this post. To maintain security and safety these additions must be met immediately.

SPACE:

This facility has an abundance of space to accomplish its goals.

EQUIPMENT:

We need a handicap van as well as a conventional fifteen (15) passenger van for transportation purposes. More

radios, batteries, chargers, flashlights, handcuffs, waist-chains and leg-irons are needed. A base station radio for the Control Center would be an added plus in the lines of communication.

## III. MAJOR PROBLEMS AND PLANS TO SOLVE THEM:

The basic problem that Area IV is suffering from is the lack of manpower (STAFF). The days of doing more with less are obsolete. It can not be done. Additional staff must be hired.

* * *

**EXHIBIT 3**

JAMES "JIM" M. LYLE, IV, #02386
PRO-SE, PRO-BONO, INMATE LEGAL ASSISTANT
POST OFFICE BOX 88550, CMCF, 3-B
PEARL, MISSISSIPPI 39208

– [Cover Letter sent to media and elected officials and judges.]

–

–

–

RE:

Dear

Please find enclosed a copy of the article I recently wrote detailing the horrible deficiencies and deplorable medical conditions at the Mississippi Department of Correction's new medical facility in Pearl, Ms. After four (4) prisoners needless deaths in the first 90 days of operation, clearly something has to be done to correct the lack of medically trained staff, lack of emergency medical equipment, lack of an emergency vehicle/ambulance and the staff to man it 24/7!!!

The seriously ill and disabled elderly prisoners [50's, 60's & 70's] in this new 720 Medical Unit, including myself, are scared that we are being housed in a "Death Camp" due to lack of emergency treatment or a system set-up here for emergencies. Four prisoners have died due to the lack of trained medical staff in prisoner's housing units, lack of emergency equipment in prisoner's housing units, no doctors on staff before 9AM and after 1 PM, no emergency vehicle/ambulance and a trained staff to man it 24/7.

As the appointed spokesman for these prisoners in this alleged medical facility, I implore you to print this article, an edited version of same or use it in a positive manner to bring this serious problem to the attention of the public who can call the governor or their elected officials to push to get this unconscionable scenario resolved once and for all.

Should you print this article or an edited version of it, then please sent me a copy for my records and to help calm these ill and disabled elderly prisoners.

Thank you for yur [sic] attention, cooperation and understanding concerning this serious human tragedy.

With respectful regards, I remain, . . .

Sincerely,

/s/ James M. Lyle, III

"AND JUSTICE FOR ALL, EVEN PRISONERS TOO!"

Encs.
cc/file:
jml

**EXHIBIT 6**

☐ Parchman ☐ CMCF ☐ UMC ☐ CWC

INCIDENT REPORT Page 1 of 1 Pages

| FILE TITLE SECURITY OPERATIONS | CASE STATUS: |
|---|---|

| BY: LT. KEVIN JACKSON THIRD WATCH, WATCH COMMANDER<br>AT CMCF 3, AREA IV<br><br>DATE 15 JAN 97 | WITNESS(ES)<br>LT. ALVIN HARRIS | RELATED FILES:<br>( )<br>( )<br>( )<br>( )<br>( ) |
|---|---|---|

REPORT RE: OFFENDER STACEY CARTER #35467 EXPIRING.

ON THE ABOVE DATE AT APPROXIMATELY 1705 HOURS I, LT.KEVIN JACKSON (THIRD WATCH/ WATCH COMMANDER), WAS INFORMED BY CAPT. PATRICK MARION (INSTITUTIONAL WATCH COMMANDER) THAT OFFENDER STACEY CARTER 335467 NEEDED TO BE TRANSFERRED FROM AREA IV, 720 CLINIC TO UMC FOR MEDICAL TREATMENT. AT APPROXIMATELY 1720 HOURS, THE AMBULANCE ARRIVED ON THE GROUNDS WITH EMS OPERATORS MITCHELL RAY, JOHN BARTHAN AND CHRISTOPHER FITE. AT APPROXIMATELY 1740 HOURS THE AMBULANCE EXITED THE GROUNDS WITH OFFENDER CARTER ALONG WITH OFC. KURT WILSON AS ESCORT. AT APPROXIMATELY 1743 HOURS,

CAPT. MARION INFORMED ME (LT. JACKSON) THAT WHILE ENROUTE TO UMC, OFFENDER CARTER EXPERIENCED MEDICAL COMPLICATIONS AND WAS TAKEN TO THE NEAREST HOSPITAL (RANKIN MEDICAL CENTER). AT APPROXIMATELY 1837 HOURS CAPT. MARION INFORMED ME (LT. JACKSON) THAT OFFENDER STACEY CARTER #35467 HAD EXPIRED AT RANKIN MEDICAL CENTER. AT THIS TIME SUPERINTENDENT JOHN F. DONNELLY, WARDEN WOOD BROWN, DEPUTY WARDEN ANTHONY COMPTON, CHIEF OF SECURITY MARGARET BINGHAM AND CAPT. RUFUS BURKS WERE NOTIFIED. OFFENDERS CARTER'S PROPERTY WAS COLLECTED AND INVENTORIED BY SGT. DARIAN LIPSEY AND SGT. ALMA HARRIS. AT APPROXIMATELY 2044 HOURS, OFFENDER CARTER'S PROPERTY WAS TURNED OVER TO DEPUTY WARDEN COMPTON. I LT. JACKSON THEN FILED THIS REPORT.********** ********** END OF REPORT **********

| SIGNATURE OF OFFICER | APPROVED NAME TITLE | DATE |
|---|---|---|
| /s/ Lt. K. Jackson | | |

**EXHIBIT 7**

MISSISSIPPI DEPARTM

UNIT R

UNIT NO. B-2 LOCATION Area IV - CMC7 UNIT ADM

| Date | Hours | Count | Incident |
|---|---|---|---|
| 1-15-97 | 1641 | 90+6(93+3) | Clyde Weasley #27 |
| late entry | 1600 | 90+6(93+3) | Ofc. Wilson 10/21 St Jack |
| | | | needed to transport Louva |
| | | | #35467 to 720 Clinic |
| | 1643 | 92+4 | Ofc Richardson conducte |
| | 1701 | 92+4(95+1) | Sgt Lipsey entered with |
| | | | Jerry Billard #100454 |
| | 1703 | 92+4(95+1) | Ofc. Wilson 10/21 coun |
| | 1734 | | Count cleared BOP |
| | 1736 | 91+5(94+1) | 1 10/15 Phillip Thresher |
| | 1806 | 61+29(91+1) | 24 10/15 exit to dining |
| | 1808 | 61+28(91+1) (94+1) | Miles Robinson #267 Count = 95, Stacey Co |
| | 1830 | 91+4 | 24 10/15 entered from |
| | 1835 | 91+4 | Ofc. Richardson co |
| | 1855 | 91+4(95) | Ofc. Richardson 1 |

Record all visitors and incidents in unit regardless of signif
the day and night. Record all unit counts. At change of shif
will sign after his notation. Show hour of count. Show time
frequent inspections. Keep unit clean. Mail original to sec
all visitors except visiting day - Security.

RETAIN DU



PENGAD-Bayonne, N. J.
EXHIBIT
7
J. Lyle

36

ENT OF CORRECTIONS

EGISTER

NISTRATOR Capt. See DATE 1-15-47

| | Officers | Watch | Signed |
|---|---|---|---|
| 22 BP | Wilson | 7th | |
| es of transportation | Lt Brandon | 3 | |
| e Stacey Carter | Sgt. Harris | | |
| BP | | | |
| count BP | | | |
| 7:15 from UMC. | | | |
| Robert Baines #34893 BP | | | |
| + 40 Ofc Wilson at Area IV Control BP | | | |
| | | | |
| 34707 exit 40 w/commander BP | | | |
| hall escorted by Sgt Harris Sgt Stacey | | | |
| 5 has been dropped from count - Ellis | | | |
| ter exit 40 Parkin Medical BP | | | |
| during Yard BP | | | |
| ducted count BP | | | |
| el count 40 Ofc Wilson at Area IV | | | |

ance. Start at midnight. Frequent counts must be made throughout relieving officer counts with officer on duty. Officer making count ficers report on and off duty, and officers on days off. Be alert. Make rity office twice a week. Log all movement in and out of unit. Log

PLICATE IN BOOK

"New Prison Medical Facility or Death Camp?"

When Mississippi Department of Correction officials announced the opening of a new 720 bed medical facility in Pearl for all the critically ill and disabled prisoners in their over-crowded prison system, these officials mislead the citizens and taxpayers of this state to believe that this new modern medical facility would provide the best environment and medical care for these prisoners as well as save the state millions of dollars!

WHAT A TRIUMPH OF FORM OVER SUBSTANCE!!! In the 90 plus days that this new medical facility has been open, four (4) prisoners have died due to lack of trained medical personnel in the priosner [sic] housing units, no ambulance or staff for it on a 24/7 basis and no emergency medical equipment in the housing units like resuscitators, oxygen equipment or emergency trauma kits.

This past week of January 13 thru 19, 1997, has been extremely deadly for the prisoners in this new medical facility due to the negligent death of two (2) black prisoners. On Monday night (1/13), an older black man was given the wrong controlled medication by untrained unit officer causing him to go into cardiac arrest and die because there was no doctor on duty and the nurse did not know how to operate the heart stimulator shock pads to bring him out of cardiac arrest. This prisoner died before paramedics arrived at the 720 Clinic. Then on Wednesday afternoon (1/15), a 22 year old prisoner died of massive seizures (Grandmaw) because it took more than one hour to get him to the 720 Clinic after he had the first seizure. Finally prison officials sent a hand stretcher to have this prisoner carried by hand to the 720 Clinic. Prison officers on duty

refused to carry this prisoner because they were afraid that they might drop him and cause his death and make them liable, so they ordered several prisoners to carry this prisoner the 100 yards to the 720 Clinic in the freezing rain. At the Clinic, the prisoner went into one last seizure causing him to go into cardiac arrest. Again there was no doctor or trained medical personnel to operate the heart stimulator shock pads and this prisoner was dead when paramedics finally arrived at the 720 Clinic.

This prisoners family (mother) was told by a prison spokesman that her son was taken to a local hospital twice before he died, what a horrible-cover-your-butt-lie! After she found out the truth from prisoners who witnessed the whole scenario about how her son died, she is preparing with attorneys to file a wrongful death lawsuit against prison officials for the gross negligence and deliberately indifferent medical care given to her son that caused his totally unnecessary death.

Prison officials opened this new facility before it was completely constructed, without properly trained medical staff, without an emergency vehicle/ambulance or the staff to man it 24/7, without emergency equipment in the prisoner housing units and with the the unconscionable attitude of Charles Dicken's fictional character Ebenezer Scrooge who stated in "A Christmas Carol", "Let the retched prisoners die, for it will decrease the surplus population!"

This writer has confronted Superintendent John F. "Jack" Donnelly and 720 Warden Wood Brown about these serious medical deficiencies in face to face meetings in Nov. and Dec. '96 and again in Jan. '97, but was given the same excuses, "NO MONEY, their hands are tied and they

have done all they can do by reporting the problems to Comm. Steve W. Puckett!" These two men have seen first hand the above-detailed deficiencies and have made an enormous effort to push for these critically needed trained medical personnel and equipment, but clearly they can only do so much and the changes have to come from Comm. Steve W. Puckett who seemingly has turned a blind eye to these serious medical deficiencies!

Four men have died needlessly at this new medical facility due to the inadequate and untrained prison staff, no medical emergency equipment in the housing units and no emergency vehicle/ambulance with the staff to man it 24/7! Clearly the prison officials were right about one thing, they have saved the taxpayers millions of dollars by not equipping and staffing this new medical facility properly to ensure prisoners reasonable medical care. Instead this new facility is a death camp for MDOC's disabled and critically ill prisoners. It is cheaper to let prisoners die than to treat them properly, right Mr. Commissioner!! How many moe [sic] lives have to be lost before this new facility can be properly termed a "Medicla [sic] Facility" instead of a "Death Camp"?

Prisoner's family and friends are requested to call Governor Fordice and demand taht [sic] the state provide proper medical treatment, staff and equipment for their incarcerated ill and disabled relatives and friends currently housed at this new facility! This is a FREE CALL, 1-800-832-6123, anywhere in Mississippi!!!

/s/ James M. Lyle, IV
James "Jim" M. Lyle, IV,
#02386
720 Medical Unit, CMCF, 3-B
Post Office Box 88550
Pearl, Ms. 39208

IN THE CIRCUIT COURT OF RANKIN
COUNTY, MISSISSIPPI

RUBY CARTER, INDIVIDUALLY, AND ON BEHALF OF THE ESTATE OF STACIE CARTER, DECEASED — PLAINTIFFS

VERSUS — CIVIL ACTION NO. 98-238

THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. — DEFENDANTS

**********

DEPOSITION OF VALENTINO LEWIS

**********

APPEARANCES NOTED HEREIN

Deposition Taken at the Instance of
the Plaintiffs
In the Mississippi Correctional Facility
Rankin County, Mississippi
On Tuesday, November 20, 2001
Commencing at 4:31 p.m.

---

RENO REPORTING
KARA K. KELLER, CSR
POST OFFICE BOX 1142
RIDGELAND, MISSISSIPPI 39158
TELEPHONE: (601) 978-3666

* * *

[7] Q. No, not captain. I said Catherine.

A. Oh.

Q. Was it Catherine Burgess?

A. I think, yeah, that's her first name. Catherine. She should be a Jenkins now.

Q. Where was she?

A. She was in the picket.

Q. Now, what's the picket?

A. The tower.

Q. Okay. And how did you get her attention?

A. Well, I went to the – I went to the picket. They won't – they won't do anything until after the third seizure. It's always required. After the third seizure, that's when they will actually call medical.

And so I went to her after his third seizure, and I – she called medical. And then I went back, and he was laying on the floor. He would go in the seizure, come out, go in, come out, go in, come out.

Q. Well, let me back up a minute. Do you know about what time it was that he had his first seizure? Was it before or after supper?

A. It was before supper.

Q. Before supper he had his first seizure.

[8] How soon after the first seizure did he have his second seizure?

A. He went right into it (witness snapped fingers).

Q. Did he have his third seizure before supper?

A. Yes, sir.

Q. Did you go tell Catherine Burgess after the third seizure, or did you go before the – or did you –

A. Well – well, see, at first we thought he had a seizure; but, then, like I said, they can't call until after the third seizure. So I went and told her that the third seizure – you know, he had his third seizure, and so then that's when she called.

Q. Okay. So they had a policy that they told the inmates that they wouldn't call medical until after the third seizure.

A. That's in every prison. After the third seizure you don't – you know, that's when they call.

Q. Okay. Do you know if Stacie had some medicine in the unit or in the cell with him?

A. Well, he kept – they kept Dilantin, and we made sure Stacie kept – took his Dilantin.

Q. Okay. But, now, let me ask you this: [9] Was Dilantin – did Stacie have possession of it, or did some – did the MDOC official have possession of the Dilantin?

A. I can't remember that. I just remember we used to tell Stacie, "Make sure" – "make sure" – "Stacie, you done took your medication?" Like that. I – can't remember if he had it, or I can't remember if the officer had it.

Q. But Stacie did take his medication?

A. Yeah. We always made sure he took his medication.

Q. Okay. After the third seizure, you went and told Officer Burgess that he had had his third seizure.

A. Yes, sir.

Q. Do you know about what time it was? It was before supper, though.

A. It was before supper, because I'm trying to think – I can't remember if it was after 3:00. I can't remember if it was after 3:00, because I was trying – I'm trying to recollect what shift she worked. I believe she worked the 7:00 to 3:00 shift at the time, if I'm not mistaken. But I – I – I can't remember if it was after 3:00 or not, but I know it was before supper.

[10] Q. Okay. And what happened after you went and told her?

A. Well, she got on – I – she got on the phone and she called the clinic, and then he kept on having his seizures. I went back up there and told her that he was – that he was continuing to have seizures. She got back on the phone. Then we just stood up there, and I started praying. You know what I'm saying? Because like I said, we was all the family. And I started praying, asking for God not to take him and everything.

And then the next thing, Stacie had grabbed my hand and he looked in my eyes, and everything like that. And I was just praying. I was telling him to, "Hold on. Hold on." Got up, went back up there and told Officer Burgess again that he was continuing to have seizures, but wouldn't nobody come because they didn't have no ambulance or nothing.

And then when they did finally come, Stacie's – by the time they came, Stacie had had seven seizures before they even came and got him.

Q. He had had seven?

A. Uh-huh (affirmative).

Q. Who came?

A. It was an S and E officer. It was – I [11] can't remember his name, but he came by himself with a cot, an Army cot. And it was sleeting outside, sleeting outside. And two inmates had got Stacie and put him on a cot. I got his coat, and I put his coat over him. And I – and I took his glasses and put them in his locker.

Q. Do you know who – what the names of the two inmates that put him on the cot?

A. James – I can't remember James' last name.

Q. Where was James from?

A. McComb.

Q. Do you know what he was in there for?

A. No.

Q. Okay. Who was the other . . .

A. If I'm not mistaken, I want to say Ernest Covan.

Q. Okay. They put him on a cot and took him to –

A. They ran him up –

Q. – the clinic?

A. They ran him up there to the clinic. And it was sleeting and cold, and I put his coat over him.

Q. You didn't go to the clinic?

A. No, because they – they had already had [12] two and they wouldn't allow anyone else to go.

Q. How long was it before James and Ernest Covan came back?

A. It wasn't that long, because when James came back, he was saying that he was trying to go with – go to the hospital with them; but, you know, they wasn't going to let him go. And then when he came back, we went to – we went to supper then.

And then after we came back, we was getting ready to sit down – well, I was sitting down because I remember Martin was on. And then I remember this officer, Officer Richardson, she called me to the picket; and she had told me, she said, "Stacie died." I can't remember – I can't remember if it was at 6:20 or – I knew it was 6:00 something, she told me that Stacie had died. And I –

* * *

Q. Okay. What time was supper?

A. I can't remember, because this was like when it gets dark around that time, like 5:00 something.

Q. When you went up to the picket and [13] Officer Burgess was in the picket – was in the tower, was there any other officer in the tower with Officer Burgess?

A. She was by herself.

Q. Was there any other officer up there with Officer Richardson?

A. She was by herself.

Q. When you were up there talking with Officer Burgess, did she . . .

A. She was concerned. She did her part, because like I said, she went and called. And she – every time I went up there, she would call; but, you know, there was no one – there was no one in the clinic, because they had had no ambulance, they didn't have rights to nothing.

You know, that was a new facility, and they hadn't even had everything together for us to move down there as far as medicalwise. That's supposed to be a disability camp.

THE COURT REPORTER: Wait. Slow down just a little bit.

THE WITNESS: Oh, okay.

THE COURT REPORTER: You talk very fast. Go ahead.

A. Okay. It's a disability camp. And if it [14] was going to be a disability camp, seemed like they should have had ambulance, medical staff, and everything ready for us before they moved us down there, and they didn't.

BY MR. RHODES:

Q. Okay. Now, when Officer Burgess called – I want to try to find out – did she complain that there was nobody there at the clinic to respond or nobody there to answer the phone at the clinic or . . .

A. No. She – but I kept telling her, and she would get on the phone and she would call.

Q. Do you know if she ever got anybody?

A. Not that I know of. I don't know. You know what I'm saying? I just know she'd get on the phone and call, and I'd go back and – I'd go back to Stacie.

Q. Okay.

A. You know, and when I see her get on the phone and call, then I go back to Stacie.

Q. Do you know of any other inmates that died at the facility prior to Stacie dying?

A. There was plenty of the deaths. There was plenty of deaths. I mean, it seemed like – seemed like one while, it was just deaths. Seemed [15] like it was like a month. And then during the same time that Stacie died, I think it was like two weeks later, another die – another guy died.

Q. George Luellen?

A. I can't remember his name. I think he had a heart attack, an older guy.

Q. There was another older guy. I'm trying to think of his name. George Killingsworth.

A. I can't remember the name.

Q. Okay. Do you know if there was anybody at the – at the clinic when they made it over there with Stacie?

A. Well, it had to be, because they had to – when they got to the clinic, that's when they – that's when I was told that they called the ambulance then.

Q. Okay. Do you know how long it was between the time you went and told Office Burgess that Stacie has had – had had his third seizure and the time they actually

came with the cot? How long – how long of a time had passed between those two times?

A. It was a while. It was a while.

* * *

IN THE CIRCUIT COURT OF
RANKIN COUNTY, MISSISSIPPI

| | |
|---|---|
| RUBY CARTER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF STACIE CARTER, DECEASED | PLAINTIFFS |
| VERSUS | CIVIL ACTION NO. 98-238 |
| THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. | DEFENDANTS |

DEPOSITION OF RUBY CARTER

APPEARANCES NOTED HEREIN
Deposition Taken at the Instance of
the Defendants
In the Offices of Page, Kruger & Holland
Ridgeland, Mississippi
On Tuesday, November 20, 2001
Commencing at 8:39 a.m.

RENO REPORTING
KARA K. KELLER, CSR
POST OFFICE BOX 1142
RIDGELAND, MISSISSIPPI 39158
TELEPHONE: (601) 978-9866

* * *

[3] RUBY CARTER, having been duly sworn, testified as follows:

EXAMINATION BY MR. HOLLAND:

Q. Ms. Carter, please state your full name for the record.

A. Ruby Lee Carter.

* * *

[26] Q. Okay. Now, I'm going to ask a couple of questions about his time there at Parchman. I understand he first went – where was he first incarcerated? There at Lincoln County?

A. In the Lincoln County Jail.

Q. All right. And where did he go from Lincoln County?

A. From Lincoln County he went to Rankin [27] County.

Q. Okay. Did he go to any other places, or he went straight to Ranking – was that the last place that he went?

A. He went straight to Rankin County, then they moved him to Parchman. I guess that's at – that – what they call it? Classification? And he told me it was because of his medical condition. And he stayed there until October or November of '96.

Q. All right. Okay. And then he moved back to the Rankin County facility?

A. Yes. They moved him back to Rankin County.

Q. All right. Now, when you talk about his medical condition, what we're talking about there is the fact that he took Dilantin for seizures. Correct?

A. Yes.

Q. All right. Now, would he have – prior to the time that he was incarcerated, would he have seizures even when he was on Dilantin?

A. Prior to the time he was incarcerated?

Q. Yeah. Let me ask a better question.

A. I –

Q. He started taking Dilantin in July –

A. Uh-huh (affirmative). Yes.

[28] Q. – of '93, I think, or whenever he was at Copiah –

A. Yes.

Q. – Co-Lin, and he kept taking it until the time of his passing.

A. Yes.

Q. Prior – all right. Did he have seizures between the time he started taking Dilantin and the time that he was arrested?

A. That's what I'm trying to remember.

Q. Yeah.

A. Did I make another trip back to a doctor with him with seizures? Yes.

Q. Okay.

A. He had –

Q. The reason I'm asking, I want to know whether the Dilantin was working or not.

A. Yeah.

Q. Okay. So what you're saying is you went to the doctor with him with seizures after he started taking Dilantin but before he was arrested.

A. Yes.

* * *

[30] Q. Had he been taking his Dilantin on a regular basis prior to that seizure?

A. Yes.

Q. All right. Now, again, let me ask – he started taking Dilantin in July. Between that time and the time he was arrested, was that the only seizure you know of?

A. That one when he had it in July, and I went to Hattiesburg with him the next day after I had gone to King's Daughters Hospital. And the one that my son Carl carried him in. I can't remember all between there, but I'm – I'm thinking those were the two.

Q. Okay. Now, let me ask you: After he was arrested up until the time that he passed away, did he have any seizures that you know of?

A. Yes.

Q. Okay. I know he did on the day that he passed away. But during this time, you know, at Lincoln county or Rankin County or Parchman –

[31] A. I didn't know of any at Lincoln County.

Q. Okay.

A. Nobody ever told me he did. And he would – he would only know if they told him, because at Parchman he – they would always – they would take him over and draw blood on – on a certain time of the month or what – what –

But anyway, they would take them before they had a meal. So this day they – he had to stay over there, and they stayed till I guess, I don't know, around close to dinner or whatever. And when he stepped off of that bus, he fell flat on the concrete. He didn't know he – he didn't know what had happened.

Q. All right.

A. They carried him then to the hospital. Okay. They carried him to the hospital, and I don't remember if that's the time that he called me. I'm – I'm – I'm thinking he was in the hospital there twice at least.

Q. At Parchman?

A. Yes.

Q. Okay. Now, were both of those because of seizures?

A. Yes.

Q. Okay.

[32] A. And – because he – when he did call me at night, he said, "I'm so tired. They said I had a seizure today."

Okay. '96 – I know in August – I – I can say I know that he had a seizure. One guy called me – one of his buddies there in the prison called me. He said, "Stacie is having seizures, and I can't get nobody to take him to the hospital."

And I called the superintendent. That's the reason I said it was August. I always take a vacation most of the time in August, and I was at home that day. And I called the superintendent up there at Parchman, and it was a lady – a lady answered the phone. And I told her that I had got word that Stacie was having a seizure. Why couldn't he be transferred to the hospital, or were they going to do anything about it?

She said, "I'll check on it."

I called back, and I couldn't get any answer. I couldn't get anybody to answer me.

I – I don't recall – I can't remember at any other time that he had one. And nobody let me know until he got to Rankin County –

Q. Okay.

A. – later on in '96, and it had to be [33] close a round November. I can't remember if it was the first or second visit I was there. And we were standing there talking. We had benches to sit on, so I had stepped over to smoke. And this one child – I don't know who he was – said, "He sure is hard to hold when he's having a seizure."

And I said, "Having a seizure?"

He said, "Yes, ma'am." He said, "We were trying to hold him."

I said, "Why were you trying to hold him?"

He said, "Because he was shaking."

He never shook when he had a seizure. He would just go into like a sleep and – trying to talk or – and he couldn't get a word out. You could get him to answer and say, you know, "Is you head hurting?"

He would say, "Uh-huh," you know.

He – he couldn't – he – he didn't do any shaking, not when I saw him have a seizure.

And the boy was telling me he – he was so hard to hold, and I wondered why. So I don't know if it had turned into epilepsy or what.

Q. All right. Do you know who that was that you had the conversation with during the visitation?

[34] A. I didn't ask him his name.

Q. Let me back up and make sure I've covered everything.

When he first was incarcerated, he went to Lincoln County, then he went to Rankin County, then he went to Parchman –

A. Yes.

Q. – then he went back to Rankin. Correct?

A. Yes.

Q. Are you aware of any seizures at Lincoln County?

A. No.

Q. Okay. The first time he went to Rankin County, right after Lincoln County, are you aware of any seizures he had then?

A. No.

Q. Okay. You told me about a seizure in August of '96 at Parchman.

A. Yes.

Q. Are you aware of any other seizures at Parchman?

A. The – the one time when he fell off the bus, when he got – stepped –

Q. Right.

A. – off the bus, he passed out. And – [35] and I don't remember the dates and time or whatever about another one that he had had.

Q. Okay.

A. And he told me he had been in the hospital.

Q. Okay. Any others at Parchman that you know of?

A. Just the account when I was telling you that the guy called me and said, He's having a seizure and they wouldn't take him to the – and that was in August of '96 –

Q. Okay.

A. – I believe.

Q. So you think there were two or three at Parchman?

A. I'm thinking three.

Q. Okay. And then he left Parchman. You had called and said, Can you get him – can you get him some help or get him to the hospital. They transferred him down to Rankin County.

A. Uh-huh (affirmative).

Q. Do you know how many seizures he had there prior to the day that he passed away?

A. Well, the one that the guy told me he was shaking.

* * *

[50] A. I don't know. I can't say because I wasn't there, but I do know that – I feel like his Dilantin level should have been checked monthly at least, you know.

* * *

[52] Q. All right. Prior to his incarceration down in Lincoln County, he was living with you or someone else?

[53] A. Living with me.

* * *

IN THE CIRCUIT COURT OF
RANKIN COUNTY, MISSISSIPPI

RUBY CARTER,
Individually and on behalf of the wrongful death heirs of STACIE CARTER, deceased — PLAINTIFFS

VS. — CIVIL ACTION NO. 98-238

MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. — DEFENDANTS

---

PLAINTIFF'S RESPONSE TO THE DEFENDANTS FIRST SET OF INTERROGATORIES TO PLAINTIFF

* * *

*INTERROGATORY NO. 1*: Identify yourself and all heirs, including birth date, birth place, residence and social security number.

*RESPONSE*: MOTHER: Ruby Lee Carter; D.O.B. 5-24-50; Birthplace, Lincoln County; 2559 Timberlane Road, N.E. Wesson, MS 39191; SSN# 429-92-9904.

BROTHER: Carl Carter; D.O.B. 2-18-68; Birthplace, Lincoln County; 3009 Cress Lane, Wesson, MS 39191; SSN# 428-29-4252.

SISTER: Alma Y. Carter Clay; D.O.B. 9-13-69; Birthplace, Lincoln County; 1013 Price Lane/Post Office Box 218, Wesson, MS 39191; SSN# 425-31-7222.

SISTER: Cheryl Denise Carter; D.O.B. 10-15-72; Birthplace, Lincoln County; 2559 Timberlane Road, N.E. Wesson, MS 39191; SSN# 428-29-4109.

BROTHER: Andrae La'Shawn Carter; D.O.B. 12-30-76; Birthplace Lincoln County; 2559 Timberlane Rd. N.E., Wesson, MS 39191.

Lavell Gray, deceased (died Spring of 1999); Prentiss, Mississippi.

* * *

(2)

No. 03-1058

FEB 23 2004

In The

# Supreme Court of the United States

RUBY CARTER, Individually, and on behalf of the Wrongful Death Heirs, Beneficiaries, and Estate of STACIE CARTER, Deceased,

*Petitioners,*

vs.

MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FRED CHILDS, in His Official Capacity as Superintendent of the Rankin County, Mississippi Correctional Facility,

*Respondents.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Mississippi**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES D. HOLLAND, ESQ.
*Counsel of Record*
MICHAEL J. WOLF, ESQ.
PAGE, KRUGER & HOLLAND, P.A.
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COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTIONS PRESENTED

I. Should the Petition for Writ of Certiorari be denied when the State Courts properly considered the facts as presented and appropriately applied the law, including defenses which were available to the state of Mississippi?

II. Should the Petition for Writ of Certiorari be denied when the State Courts considered the evidence of "policy" and "deliberate indifference" as required in summary judgment?

III. Does Mississippi sovereignty and the immunity under the Mississippi Tort Claims Act violate constitutional rights of petitioners, such that the Petition for Writ of Certiorari should be granted?

IV. Should the Petition for Writ of Certiorari be denied on the question of punitive damages in the absence of liability, without a constitutional right to such damages, and when the petitioners' Second Amended Complaint did not seek such recovery?

## LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below, as required by this court's Rule 24(b) and Rule 29.1.

1. Ruby Carter, individually, and on behalf of the wrongful death beneficiaries of Mr. Carter. Petitioners

2. The Mississippi Department of Corrections and Fred Childs in his official capacity as Superintendent of the Rankin County, Mississippi Correctional Facility. Respondents

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## STATEMENT REGARDING JURISDICTION

The issues presented to and resolved by the Mississippi Supreme Court do not create a conflict between the State Courts within the meaning of Sup. Ct. Rule 10(b) and (c). This petition simply seeks to have the Court reinterpret "facts" as reviewed by the State Courts.

## CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth, Eleventh and Fourteenth Amendments to the United States Constitution, as well as 42 U.S.C. §1983, are considered herein. Provisions from Mississippi Code Sections 11-46-1, et seq., also known as the Mississippi Tort Claims Act, also are discussed.

## STATEMENT OF THE CASE

The Petitioners brought this action based upon a claim for the wrongful death of Stacie Carter (hereinafter "Mr. Carter"). Mr. Carter died on January 15, 1997 while en route to the University Medical Center in Jackson, Mississippi. At the time of his death, Mr. Carter was an inmate at the Central Mississippi Correctional Center in Rankin County, Mississippi.

In January 1995, Mr. Carter was sentenced by the Lincoln County Circuit Court to serve a five year sentence in the custody of the Mississippi Department of Corrections for burglary and robbery.

Mr. Carter suffered from a seizure-type medical condition. Mr. Carter's medical condition was kept under reasonable control through the self-regulated use of the

prescription drug Dilantin. Due to the classification of the prescription, Mr. Carter was allowed to maintain personal possession of his medication. He was solely responsible for the amount of dosage of the medicine that he received each day.

In the original complaint, the amended complaints, and in discovery responses, the petitioners sought money damages.

On January 28, 2002, the Petitioners sought and were granted permission to file a Second Amended Complaint. The Petitioners filed the Second Amended Complaint on January 30, 2002. The Second Amended Complaint added causes of action for violations of 42 U.S.C. §1983, citing the Eighth Amendment as well as Due Process and Equal Protection rights under the Fourteenth Amendment. The caption identified Fred Childs as being sued in his official capacity. The petitioner did not request punitive damages within the Second Amended Complaint.

On March 5, 2002, an Answer to the Second Amended Complaint was filed on behalf of the Respondents. Within the Answer to the Second Amended Complaint, the respondents renewed a motion for Summary Judgment or, In The Alternative, Motion to Dismiss. The Motions were briefed and a hearing was set.

On July 2, 2002, the trial court heard oral arguments on the Motion to Dismiss or In The Alternative for Summary Judgment. On October 3, 2002, the trial court issued its order and opinion granting the motion and dismissing the action. The trial court considered all the evidence offered by the Petitioners.

The Mississippi Supreme Court affirmed the trial court's decision.

## REASONS FOR DENYING THE WRIT

### I.

### The state courts properly considered the facts as presented and appropriately applied the law, including defenses, which were available to the State of Mississippi.

The Petition for Writ of Certiorari, at its core, is an attempt to reinterpret the facts as considered by the state courts. Conflicts of law are not genuinely presented.

Petitioners suggest within the Petition for Writ of Certiorari, that the state courts did not consider certain evidence. This "evidence" was either untrue or was not genuine and material evidence given weight in summary judgment.

Taken from the Petition, pages 13 and 14, these so-called facts are as follows:

a. The RCCF was a "Death Camp" with deplorable conditions for inmates where seven (7) inmates had died, six (6) of whom were black, between October 5 1996, when the facility opened and January 15, 1997, when Stacie died.

The truth of the matter is that the petitioner offered no evidence that any of the other deaths were even remotely similar to the death of Mr. Carter. The state courts understood and considered that this suggestion was not material to the issues presented in this case.

"b. The RCCF had 600-650 inmates, of whom 60-65% were black."

While statistically questionable, it was seen for what it is, a blatant attempt to inject racial tones where none existed.

"c. The prison facility had a policy that required an inmate to suffer three seizures before the medical unit would be notified."

The lower courts understood that this was not a blanket policy and that all circumstances or factors would be considered. The state courts were able to consider the "genuineness" of this evidence according to state standards.

"d. Nurses were not available at the facility on a daily or hourly basis." and

"e. There was not ambulance or physician on duty."

These statements ignore the fact that Mr. Carter died after having been taken to one hospital and was being transferred to another. They also ignore the fact that no evidence whatsoever was offered that such staffing caused or would have changed the result. Further, the argument is hardly genuine in that it ignores the "on-call" medical personnel.

"f. Funds had been appropriated for an ambulance, but the funds had been misspent."

The state courts saw this "evidence" for what it was, and what it was not. It was not the type of evidence which was generally acceptable pursuant to MRCP 56; nor was it material to the legal issues presented.

"g. The correction officers at the facility had not been trained to render medical treatment not even C.P.R."

This statement was not supported by the training records of any person, nor does it address the training of the personnel who were involved with Mr. Carter. But most significantly, it again ignores the fact that Mr Carter died while being transported from one hospital to another. The medical care which may have been offered by correctional officers was simply not relevant.

"h. There was a staff shortage of corrections officers to monitor the inmates at the facility."

No evidence was offered regarding medical service personnel and staffing or that such staffing caused or changed the result. The state courts considered the suggestion and gave it appropriate weight.

"i. All of the inmates at the RCCF had serious medical needs."

This is simply not true, the state courts were able to recognize the absurdity of the statement.

"j. Corrections officials knew about Stacie's seizures and knowingly transferred him from Parchman which had a prison hospital to the RCCF which did not have a prison hospital.

This statement ignores the fact that Mr. Carter did not require regular hospitalization prior to his death. He was self-regulating his seizure disorder with Dilantin. The state courts considered these facts.

Rather than acknowledge that the state courts considered this evidence, the petitioners argue that some circuits consider the evidence while Mississippi does not. The

primary flaw in this argument of the petitioners is that there is simply no record that the state courts did not consider the conditions of confinement. A conflict between the courts does not exist under these circumstances.

## II.

## The state courts considered the "genuineness" of the evidence of "policy" and "deliberate indifference" as required in summary judgment.

Despite the petitioners' assertion that the facts suggest "deliberate indifference" or a policy of violating a constitutional right, they fail to offer facts which support this argument.

In considering the Eighth Amendment claim, the Petitioners have the burden of showing that the State acted or failed to act with "deliberate indifference" to the "basic human needs" of Mr. Carter. Petitioners failed to show that to be true.

The decedent, Mr. Carter, suffered his first seizure while still a student in high school, nearly five years prior to his death. Carter had sought and received medical treatment for his seizure condition. As part of his treatment and control of his unfortunate physical condition, Carter was prescribed the commonly known medication Dilantin. Carter was personally responsible for taking the proper dosage of the anti-epileptic drug to treat his condition. Ruby Carter, the mother of the decedent, has testified regarding the decedent and his prescription medication as follows:

Q. Okay. Prior to him going to the Lincoln County Jail, had he taken his Dilantin on a regular basis?

A. As far as I know.

Q. Okay. Now, was that something that – that you didn't have to look out after and for?

A. Right.

Q. He did it on his own.

A. And, you know, if he got out of medicine, I'd have it filled –

Q. Okay.

A. – you know. But as far as I know, he was taking it.

Q. But you didn't have to stand over him like you might have to a young child –

A. No.

Q. – and say, "Take your medicine"?

A. No.

Q. All right. As best you know, he was – he was of the mind to take medicine on a regular basis like he was supposed to.

A. Yes.

The State of Mississippi and Fred Childs had no advance knowledge that inmate Mr. Carter was experiencing difficulties or problems with his seizure condition. Even his own mother who visited him at the facility in Rankin County on the Sunday prior to his death on

Wednesday has testified that the decedent was acting normal.

As Ruby Carter also testified:

> Q. Do you have any reason to believe, then, as his mama that he wasn't taking the Dilantin like he was supposed to?
>
> A. No.
>
> Q. Did he – did you ask him about his taking Dilantin?
>
> A. No, I didn't ask him because he used – I hadn't gotten no reports of no seizures lately.
>
> Q. Okay. Had he – as best you know, as we sit here today, how long prior – you know, that visit on Sunday before he passed away on Wednesday, how long had it been on that Sunday since he'd had a seizure, if you know?
>
> A. That – that was in – that was in January, and I hadn't – I didn't know of another seizure since when he first got there. And I guess it was October or November when the – when the boy told me about it.
>
> Q. During his time at the Rankin County facility when you were visiting on these Sundays, every other Sunday or Sunday – whenever it was that you visited, did you ever believe that he wasn't capable of taking the medicine he was supposed to be taking?
>
> A. No.

The Fifth Circuit has declared that under the Eighth Amendment it is the duty of the state to provide convicted inmates with the following:

> 1) basic human needs, including medical care and protection from harm during their confinement; and
>
> 2) a state jail official's liability for episodic acts or omissions cannot attach unless the official had subjective knowledge of a substantial risk of serious harm to a pretrial detainee, but responded with deliberate indifference to that risk.

*Hare v. City of Corinth*, 135 F.3d 320 (5th Cir. 1998)

Again, Petitioner had the burden of showing that the State acted or failed to act with "deliberate indifference" to the "basic human needs" of Mr. Carter. See *Hare* at 326 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104-105, 97 S.Ct. 285, 291-92 (1976)). The lower court found no evidence of such deliberate indifference.

As important as the court finding no deliberate indifference was the fact that the State Court applied the correct legal test – the same test which is used throughout the circuits of the United States.

## III.

## Mississippi sovereignty and the immunities under the Mississippi Tort Claims Act do not violate constitutional rights of petitioners.

The Petitioner argues a due process violation rooted in a liberty interest rather than property interest. The distinction between a "liberty" interest and a "property" interest is significant. It is in this distinction that we see that there is no difference between the courts within the United States.

The liberty interest described in the Petition is derived from the relationship between the parent and child. Yet, the interest in having a wrongful death claim considered separate from the claims of the decedent rest in property rights conveyed by the state. Such property rights have not been conveyed by Mississippi.

In support of their position the petitioners cite *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984). *Bell* involved an action by an estate after a police involved death, where the court looked to the meaning of Wisconsin's wrongful death and governmental immunity statutes. The resulting analysis was a determination that a property right was created by the State of Wisconsin.

Mississippi Courts considered the Mississippi wrongful death statutes and the Tort Claims Act and determined that no property right was established. Hence, no conflict in the laws exist, and the writ of certiorari should not be granted.

## IV.

## Punitive damages in the absence of liability, without a constitutional right to such damages, and when the petitioners' Second Amended Complaint did not seek such recovery, are not available.

The petitioner raises the question of punitive damages. It is important to first note that the Mississippi Supreme Court did not rule on the question of punitive damages. The absence of liability precluded consideration. For that reason alone, it would be prudent to deny certiorari on this question.

Further, immunity under the Mississippi Tort Claims Act, and the exclusion of punitive damages, does not violate the due process clause or equal protection clause. *Quinn v. Mississippi State University*, 720 So.2d 843 (Miss. 1998). Principles of sovereign immunity do not violate the due process clause of the Fourteenth Amendment since there is no right to sue the state at common law, and where the legislature continued to withhold such right, none is created. *Mohundro v. Alcorn County*, 675 So.2d 848 (Miss. 1996).

Further and contrary to the Petitioners' suggestion, they would not be entitled to punitive damages under 42 U.S.C. §1983 in any event. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 101 S.Ct. 2748 (1981).

Finally, the punitive damages argument is shallow when one considers that the Second Amended Complaint did not seek such recovery.

## CONCLUSION

There is no conflict between the Mississippi Supreme Court and the Circuit Courts within the United States on any issues presented. This petition is no more than an effort to reinterpret facts. The petition does not call to question a conflict in the laws.

FOR THESE REASONS, Respondents pray that the Petition for Certiorari will denied.

Mississippi Department of
Corrections and Fred Childs,
Respondents

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